

No. 13045

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United States  
Court of Appeals  
for the Ninth Circuit

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LINDSAY C. HOWARD,

Petitioner,

VS.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

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Transcript of Record

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FILED

OCT 11 1951

Petition to Review a Decision of The Tax Court  
of the United States

PAUL P. O'BRIEN  
CLERK



No. 13045

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Court of Appeals  
for the Ninth Circuit

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Petitioner,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## APPEARANCES

For Petitioner:

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ARTHUR McGREGOR, Esq.

HOWARD W. REYNOLDS, Esq.

ADAM Y. BENNION, Esq.

NEIL S. McCARTHY, Esq.

For Respondent:

H. A. MELVILLE, Esq.

[1\*]

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\* Page numbering appearing at top of page of original certified Transcript of Record.



The Tax Court of the United States

Docket No. 20860

LINDSAY C. HOWARD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1948

Nov. 1—Petition received and filed. Taxpayer notified. Fee paid.

Nov. 2—Copy of petition served on General Counsel.

Dec. 8—Answer filed by General Counsel.

Dec. 8—Request for hearing in Los Angeles, Calif., filed by General Council.

Dec. 9—Notice issued placing proceeding on Los Angeles Calendar. Answer and request served.

1950

Apr. 27—Hearing set June 26, 1950, Los Angeles, Calif.

July 13—Hearing had before Judge Van Fossan on merits, stipulation of facts filed. Briefs, Aug. 28, 1950. Replies, Sept. 12, 1950.

Aug. 10—Transcript of Hearing 7/13/50 filed.

Aug. 18—Motion for extension to Sept. 26, 1950, to filed brief filed by taxpayer. Granted 8/18/-50.

Sep. 25—Brief filed by taxpayer. Copy served 9/27/-50.

Sep. 26—Brief filed by General Counsel.

Oct. 10—Motion for extension to Nov. 10, 1950, to file reply brief filed by General Counsel. Granted 10/11/50.

Oct. 12—Reply brief filed by taxpayer. Copy served.

Nov. 10—Reply brief filed by General Counsel. Served 11/13/50.

1951

Jan. 24—Findings of Fact and Opinion rendered. Judge Van Fossan, decision will be entered under Rule 50. Copy served.

Feb. 5—Motion to correct findings of fact filed by petitioner. Denied 2/12/51.

Feb. 5—Motion to reconsider the Court's Opinion on the second issue filed by petitioner. Denied 2/12/51.

1951

Apr. 10—Respondent's Computation for entry of decision filed.

Apr. 12—Hearing set May 23, 1951, Washington, D. C., under Rule 50.

Apr. 24—Consent to respondent's computation for entry of decision filed.

Apr. 26—Decision entered, Van Fossan, J Div. 9.

July 23—Petition for Review by U. S. Court of Appeals for the Ninth Circuit with Assignments of Error filed by taxpayer.

July 23—Proof of Service filed.

July 23—Designation of Record filed by taxpayer with service acknowledgment thereon.

The Tax Court of the United States

Docket No. 23168

LINDSAY C. HOWARD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1949

May 18—Petition received and filed. Taxpayer notified. Fee paid.

May 19—Copy of petition served on General Counsel.

July 5—Answer filed by General Counsel.

July 5—Request for Hearing in Los Angeles, Calif., filed by General Counsel.

July 11—Notice issued placing proceeding on Los Angeles, Calif., calendar. Service of answer and request made.

1950

Apr. 27—Hearing set June 26, 1950, Los Angeles.

July 13—Hearing set before Judge Van Fossan on merits, stipulation of facts filed. Briefs, Aug. 28, 1950. Replies Sept. 12, 1950.

Aug. 10—Transcript of Hearing 7/13/50 filed.

Aug. 18—Motion for extension to Sept. 26, 1950, to file brief by taxpayer. Granted 8/18/50.

Sep. 25—Brief filed by taxpayer. Copy served 9/27/-50.

Sep. 26—Brief filed by General Counsel.

1950

Oct. 10—Motion for extension to Nov. 10, 1950, to  
filed reply brief filed by General Counsel.  
Granted 10/11/50.

Oct. 12—Reply brief filed by taxpayer. Copy served.

Nov. 10—Reply brief filed by General Counsel.

1951

Jan. 24—Findings of Fact and Opinion rendered, J.  
Van Fossan, decision will be entered under  
Rule 50. Copy served.

Feb. 5—Motion to correct findings of fact filed by  
petitioner. Denied 2/12/51.

Feb. 5—Motion to reconsider the Court's Opinion  
on the second issue filed by petitioner.  
Denied 2/12/51.

Apr. 10—Respondent's computation for entry of de-  
cision filed.

Apr. 12—Hearing set May 23, 1951, Washington,  
D. C., under Rule 50.

Apr. 24—Consent to respondent's computation for  
entry of decision filed.

Apr. 26—Decision entered. Van Fossan, J. Div. 9.

July 23—Petition for Review by U. S. Court of Ap-  
peals for the Ninth Circuit with Assign-  
ments of Error filed by taxpayer.

July 23—Proof of Service filed.

July 23—Designation of record filed by taxpayer with  
service acknowledged thereon. [2]



The Tax Court of the United States

Docket No. 20860

LINDSAY C. HOWARD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiencies set forth by the Commissioner of Internal Revenue in his notice of deficiency (LA:IT:90D:LHP) dated August 6, 1948, and as a basis of his proceeding alleges as follows:

1. Petitioner is an individual residing at 1230 Benedict Canyon Drive, Beverly Hills, California. The returns for the periods involved were filed with the Collector of the Sixth District of California.

2. The notice of deficiency (a copy of which is attached and marked "Exhibit A") was mailed to the petitioner on August 6, 1948.

3. The taxes in controversy are income and victory tax for the calendar year 1943 in the sum of \$6,204.99 and income tax for the calendar years 1944 and 1945 in the sums of \$3,439.12 and \$2,077.84, respectively. In addition, petitioner claims an overpayment for the year 1943 due to the Commissioner's reduction of partnership income.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The Commissioner erred in disallowing deductions for legal fees and expenses paid by peti-

tioner during the taxable years 1943 and 1944 in the respective amounts of \$10,017.91 and \$8,451.24.

(b) The Commissioner erred in disallowing depreciation deductions for the years 1944 and 1945 in the respective amounts of \$454.54 and \$1,476.98.

5. The facts upon which the petitioner relies as a basis of this proceeding are as follows:

(a) During the year 1943, while petitioner was a Captain in the United States Army, court martial proceedings were initiated against him, seeking to cause his dishonorable discharge from the Army. Petitioner was acquitted of the charges brought against him.

(b) In the year 1938 petitioner and his then wife, Anita Z. Howard, entered into a property settlement agreement. Shortly thereafter Anita Z. Howard obtained a divorce from petitioner in the State of Nevada, the decree of divorce incorporating therein said property settlement agreement. In accordance with the terms of that agreement, petitioner paid his former wife \$1,250.00 per month until January 1, 1942. The agreement required such monthly payments to be made until the re-marriage of Anita Z. Howard.

(c) Subsequent to January 1, 1942, petitioner discontinued said monthly payments, as a result of which Anita Z. Howard commenced an action against petitioner in the Superior Court in and for the County of San Francisco, California, for the purpose of establishing the Nevada decree as a judgment of the State of California and to recover sums due under the property settlement agreement incorporated therein.



(d) Petitioner filed an answer and a cross complaint in said action, alleging that (1) the obligation to make monthly payments had been terminated by reason of a subsequent Mexican common law marriage of Anita Z. Howard, and (2) the property settlement agreement had been procured by the fraud of Anita Z. Howard. Judgment in that proceeding, after prolonged litigation, ultimately was rendered in favor of Anita Z. Howard. See *Howard vs. Howard*, 157 Pac. (2d) 874, 161 Pac. (2d) 681, and 163 Pac. (2d) 439.

(e) For attorneys' fees, costs and expenses in the two proceedings referred to above, the petitioner paid the amounts of \$10,017.91 and \$3,451.24 during the tax years 1943 and 1944, respectively. Petitioner is informed and believes that said amounts are deductible from gross income under the provisions of Section 23 (a) of the Internal Revenue Code and that the Commissioner's disallowance thereof is erroneous and illegal.

(f) During the years 1944 and 1945 sundry assets owned by petitioner in connection with his ranch (to-wit, a manager's house, furniture and linens) sustained depreciation in the amounts of \$454.54 and \$1,476.98, respectively. Petitioner is informed and believes that such depreciation is allowable as deductions under the Internal Revenue Code and that the Commissioner's disallowance thereof is erroneous and illegal.

Wherefore, petitioner prays that this Court may hear the proceeding and determine that the Commis-

missioner erred in the particulars hereinabove set forth and grant to the petitioner such other and further relief, including refunds, as to it seems just and proper in the premises.

Dated October 26, 1948.

Respectfully submitted,

/s/ A. CALDER MACKAY,  
/s/ ARTHUR McGREGOR,  
/s/ HOWARD W. REYNOLDS,  
/s/ ADAM Y. BENNION,  
Counsel for Petitioner.

Of Counsel:

/s/ NEIL S. McCARTHY,

State of California,  
County of Los Angeles—ss.

Lindsay C. Howard, being first duly sworn, deposes and says that he is the petitioner above named; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge, except the matters which are therein stated to be upon information and belief, and that as to those matters he believes it to be true.

/s/ LINDSAY E. HOWARD

Subscribed and sworn to before me this 29th day of October, 1948.

[Seal] /s/ MARY E. WHITTHORNE,  
Notary Public in and for said County and State.  
My Commission expires November 26, 1949.

EXHIBIT "A"

Treasury Department, Internal Revenue Service  
417 So. Hill St., Los Angeles 13, Calif.

Aug. 6, 1948

Office of Internal Revenue Agent in Charge  
Los Angeles Division  
LA:IT:90D:LHP

Mr. Lindsay C. Howard  
1230 Benedict Canyon Drive  
Beverly Hills, California

Dear Mr. Howard:

You are advised that the determination of your income and victory tax liability for the taxable year ended December 31, 1943 discloses a deficiency of \$6,204.99, and that the determination of your income tax liability for the taxable years ended December 31, 1944 and 1945 discloses a deficiency of \$5,516.96, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward

## Exhibit "A"—(Continued)

it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,  
Commissioner,

By /s/ GEORGE D. MARTIN,  
Internal Revenue Agent in  
Charge.

Enclosures: Statement, Form of waiver.

## STATEMENT

LA:IT:90D:LHP

Mr. Lindsay C. Howard  
1230 Benedict Canyon Drive  
Beverly Hills, California

TAX LIABILITY FOR THE TAXABLE YEARS ENDED  
DECEMBER 31, 1943, 1944 and 1945

Years		Deficiency
1943	Income and Victory Tax.....	\$ 6,204.99
1944	Income Tax .....	3,439.12
1945	Income Tax .....	2,077.84
	Total.....	<u>\$11,721.95</u>

In making this determination of your income and victory tax liability careful consideration has been given to the report of examination dated April 6, 1948.

## Exhibit "A"—(Continued)

## ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1943

	Income Tax Net Income	Victory Tax Net Income
Net income as disclosed by return.....	\$35,001.55	\$48,757.84
Unallowable deductions and additional income:		
(a) Salaries increased .....	15.00	15.00
(b) Interest on Government obligations increased .....	156.25	.....
(c) "Other deductions" decreased.....	10,017.91	.....
Total.....	\$45,190.71	\$48,772.84
Reduction of income:		
(d) Partnership income decreased.....	534.92	534.92
Net income adjusted.....	\$44,655.79	\$48,237.92

## EXPLANATION OF ADJUSTMENTS

(a) The deductions of \$60.00 claimed for California unemployment insurance is reduced to \$30.00, the amount allowable. The excessive amount claimed, or \$30.00, is disallowed, your community share of which is \$15.00.

(b) Your distributive share of interest on United States bonds, subject to surtax only, from the partnership, Charles S. Howard, Lindsay C. Howard and Robert S. Howard, has been determined in the amount of \$1,704.18, in lieu of \$1,547.93 as reported in your return, an increase of \$156.25, which amount is added to your income.

(c) The deduction of \$10,017.91 claimed under "Other deductions" for expense incurred in connection with defense of suits is disallowed due to lack of substantiation that it constitutes a proper deduction under section 23(a) of the Internal Revenue Code. It is held that such amount represents a personal expense, which is not deductible. Section 24(a) (1), Internal Revenue Code.

(d) Income from partnerships has been determined in the amount of \$11,896.87, in lieu of \$12,431.79 as reported in your return, a decrease of \$534.92, as shown in the following:



## Exhibit "A"—(Continued)

## Explanations of Adjustments—(Continued)

	Reported	Corrected	Decrease (Increase)
Binglin, Stock Farms, Ltd.....	\$14,804.25	\$13,927.44	\$876.81
Charles S. Howard, Jr., Lindsay C. Howard, and Robert S. Howard as Tenants in Common .....	(2,372.46)	(2,030.57)	(341.89)
Totals.....	\$12,431.79	\$11,896.87	\$534.92

There is allowed, under the provisions of section 131 of the Internal Revenue Code, a credit of \$59.94 for income tax paid to a foreign country, not previously claimed in your return.

## COMPUTATION OF INCOME AND VICTORY TAX—CURRENT TAX PAYMENT ACT OF 1943

## Taxable Year Ended December 31, 1943

Income tax net income adjusted.....		\$44,655.79
Less: Personal exemption .....	\$ 1,200.00	
Credit for dependents .....	1,400.00	2,600.00
Surtax net income.....		\$42,055.79
Less: Credit for interest on U.S. obligations..	\$ 1,704.18	
Earned income credit (10% of \$9,435.00).....	943.50	2,647.68
Income subject to normal tax.....		\$39,408.11
Normal tax at 6% on \$39,408.11.....	\$ 2,364.49	
Surtax on \$42,055.79.....	18,274.03	
Total income tax.....		\$20,638.52
Less: Income tax paid to a foreign country....		59.94
Net income tax.....		\$20,578.58
Victory tax net income adjusted.....	\$48,237.92	
Less: Specific exemption .....	624.00	
Income subject to victory tax.....		\$47,613.92

## Exhibit "A"—(Continued)

## Computation of Income and Victory Tax—(Continued)

Victory tax before credit (5% of \$47,613.92)		\$ 2,380.70
Less: Victory tax credit limited to		900.00
		<hr/>
Net victory tax		1,480.70
		<hr/>
1—Net income tax and victory tax		\$22,059.28
2—Income tax for 1942, as shown on line 17, page 4, of your 1943 return		\$ None
3—Amount of item 1 or 2, whichever is larger		\$22,059.28
4—Forgiveness feature:		
(a) Amount of item 1 or 2, whichever is smaller		\$ None
(b) Amount forgiven		None
		<hr/>
(c) Amount unforgiven		None
		<hr/>
5—Correct income and victory tax liability (item 3 plus item 4(c))		\$22,059.28
6—Income and victory tax liability shown on return account No. 923226		15,854.29
		<hr/>
7—Deficiency of income and victory tax		\$ 6,204.99

## ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1944

Net income as disclosed by return		\$69,759.44
Unallowable deductions and additional income:		
(a) Net gain from sale or exchange of capi- tal assets increased		\$ 586.28
(b) Partnership loss decreased		1,325.65
(c) Taxes decreased		15.00
(d) "Miscellaneous deductions" decreased		3,451.24
		<hr/>
Total		\$75,137.61
Additional deductions:		
(e) Business loss increased		241.29
		<hr/>
Net income adjusted		\$74,896.32

## Exhibit "A"—(Continued)

## EXPLANATION OF ADJUSTMENTS

(a) The net gain of \$24,279.81 reported in your return from the sale or exchange of capital assets is increased by \$586.28, representing disallowance of a long-term capital loss of that amount claimed for worthlessness of 234 shares of Durex, Inc., and 88-1/3 shares of Fire Chemicals, Inc. It has been determined that such securities did not become worthless within this taxable year. Section 23(k), Internal Revenue Code.

(b) Partnership loss has been determined in the amount of \$9,982.73, in lieu of \$11,308.38 as claimed in your return, an increase of income of \$1,325.65, as shown in the following:

	Per Return	Corrected	Income Increased
Binglin Stock Farms, Ltd.....	(\$15,108.43)	(13,819.40)	\$1,289.03
Charles S. Howard, Jr., Lindsay C. Howard, and Robert S. Howard as Tenants in Common .....	3,800.05	3,836.67	36.62
Totals.....	(\$11,308.38)	(\$ 9,982.73)	\$1,325.65

(c) The deduction of \$30.00 claimed for California unemployment tax is reduced to \$15.00, representing your community half of the amount allowable. The excessive amount claimed, or \$15.00, is disallowed.

(d) Legal fees and expenses deducted under "Miscellaneous deductions" in the amount of \$3,451.24 are disallowed, due to lack of substantiation that they constitute allowable deductions under section 23(a) of the Internal Revenue Code. It is held that such amount represents personal expenses, which is not deductible. Section 24(a)(1), Internal Revenue Code.

(e) It has been determined that a loss of \$3,982.03 was sustained from operation of your business, instead of \$3,740.74, the amount claimed in your return, an increase of \$241.29, an additional deduction for which is accordingly allowed. The amount of \$241.29 is computed as follows:



## Exhibit "A"—(Continued)

## Explanation of Adjustments—(Continued)

Additional repair expense allowable .....	\$113.69	
Additional depreciation allowable .....	\$582.14	
Less: Personal expense disallowed (depreciation on personal residence and furnishings).....	454.54	127.60
		<hr/>
Additional loss allowable.....	\$241.29	

There is allowed, under the provisions of section 131 of the Internal Revenue Code, a credit of \$266.97 for income tax paid to a foreign country, not previously claimed in your return.

## COMPUTATION OF ALTERNATIVE TAX

Taxable Year Ended December 31, 1944

Net income adjusted .....	\$74,896.32	
Less: Excess of net long-term capital gain over net short- term capital loss .....	23,720.26	
		<hr/>
Ordinary net income .....	\$51,176.06	
Less: Surtax exemptions .....	1,500.00	
		<hr/>
Balance (surtax net income).....	\$49,676.06	
Surtax on \$49,676.06.....	\$26,586.76	
Ordinary net income.....	\$51,176.06	
Less: Partially tax exempt interest..	\$320.77	
Normal tax exemption.....	500.00	820.77
		<hr/>
Balance subject to normal tax.....	\$50,355.29	
Normal tax (3% of \$50,355.29).....		1,510.66
		<hr/>
Partial tax .....	\$28,097.42	
Plus: 50% of \$23,720.26.....		11,860.13
		<hr/>
Alternative tax .....	\$39,957.55	

## COMPUTATION OF TAX

Taxable Year Ended December 31, 1944

Net income adjusted.....	\$74,896.32	
Less: Surtax exemptions .....	1,500.00	
		<hr/>
Surtax net income.....	\$73,396.32	
Surtax .....		\$44,871.02

## Exhibit "A"—(Continued)

## Computation of Tax—(Continued)

Net income adjusted.....	\$74,896.32	
Less: Normal-tax exemption .....	\$500.00	
Partially tax-exempt interest 320.77	820.77	
	<hr/>	
Net income subject to normal tax.....	\$74,075.55	
Normal tax at 3%.....		2,222.27
		<hr/>
Total normal tax and surtax.....	\$47,093.29	
Alternative tax .....	\$39,957.55	
Less: Income tax paid to a foreign country.....		266.97
		<hr/>
Correct income tax liability.....	\$39,690.58	
Income tax liability shown on return, account No. 3041961	36,251.46	
		<hr/>
Deficiency of income tax.....	\$	3,439.12

## ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1945

Net income as disclosed by return.....	\$31,799.21	
Unallowable deductions:		
(a) Business loss decreased.....	\$1,476.98	
(b) Net loss from sale or exchange of capital assets .....	1,064.84	
(c) Partnership loss decreased .....	1,028.51	3,570.33
	<hr/>	<hr/>
Net income adjusted.....	\$35,369.54	

## EXPLANATION OF ADJUSTMENTS

(a) It has been determined that a loss of \$17,250.70 was sustained from operation of your business, instead of \$18,727.68 as claimed in your return, a decrease of \$1,476.98, representing disallowance, under the provisions of section 23(1) of the Internal Revenue Code, of depreciation claimed on personal residence and furnishings.

(b) It has been determined that a net gain of \$64.84 was realized from the sale or exchange of capital assets, in lieu of a net loss of \$2,435.16 as disclosed in your return, the deduction for which was limited, under the provisions of section 117(d) of the Internal

## Exhibit "A"—(Continued)

Revenue Code, to \$1,000.00 in this taxable year. The amount of \$1,064.84 (\$64.84 plus \$1,000.00 deducted) is accordingly added to your income. The net gain of \$64.84 is computed as follows:

Net loss from sale or exchange of capital assets as dis-  
closed by return (50% of \$4,870.33).....\$2,435.16

Add: Non-business bad debt of \$5,000.00 disallowed due to  
lack of substantiation that it became worthless in this  
taxable year, 50% of which was taken into account..... 2,500.00

Net gain from sale or exchange of capital assets, as de-  
termined .....\$ 64.84

(c) Your distributive share of an operating loss sustained by the partnership, Binglin Stock Farms, Ltd., has been determined in the amount of \$28,332.46 instead of \$29,360.97 as claimed in your return. The excessive amount claimed, or \$1,028.51, is disallowed.

There is allowed, under the provisions of section 131 of the Internal Revenue Code, a credit of \$287.29 for income tax paid to a foreign country, not previously claimed in your return.

## COMPUTATION OF ALTERNATIVE TAX

Taxable Year Ended December 31, 1945

Net income adjusted.....\$35,369.54

Less: Excess of net long-term capital gain over net short-  
term capital loss ..... 64.84

Ordinary net income .....\$35,304.70

Less: Surtax exemptions ..... 1,500.00

Balance (surtax net income).....\$33,804.70

Surtax on \$33,804.70.....\$15,633.06

Ordinary net income.....\$35,304.70

Less: Normal tax exemption..... 500.00

Balance subject ot normal tax.....\$34,804.70

Normal tax (3% of \$34,804.70)..... 1,044.14

Partial tax .....\$16,677.20

Plus: 50% of \$64.84..... 32.42

Alternative tax .....\$16,709.62

## Exhibit "A"—(Continued)

## COMPUTATION OF TAX

Taxable Year Ended December 31, 1945

Net income adjusted.....	\$35,369.54	
Less: Surtax exemptions .....	1,500.00	
Surtax net income .....	\$33,869.54	
Surtax .....		\$15,675.20
Net income adjusted .....	\$35,369.54	
Less: Normal-tax exemption .....	500.00	
Net income subject to normal tax.....	\$34,869.54	
Normal tax at 3% .....		1,046.09
Total normal tax and surtax.....	\$16,721.29	
Alternative tax .....	\$16,709.62	
Less: Income tax paid to a foreign country.....	287.29	
Correct income tax liability.....	\$16,422.33	
Income tax liability shown on return, account No. 3048768	14,344.49	
Deficiency of income tax.....	\$ 2,077.84	

Received and Filed T.C.U.S. Nov. 1, 1948.

[Title of Tax Court and Cause.]

## ANSWER

The Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition except that it is denied that the return for 1943 was filed with the Collector for the Sixth District of California.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits that the taxes in controversy are income and victory taxes for the calendar year 1943 and income taxes for the years 1944 and 1945 as alleged in paragraph 3 of the petition and denies the remaining allegations contained in said paragraph.

4. (a) and (b). Denies all the allegations of error contained in paragraph 4 of the petition.

5. (a) to (f), inclusive. Denies the allegations of fact contained in subparagraphs (a) to (f), inclusive, of paragraph 5 of the petition.

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ CHARLES OLIPHANT, ECC  
Chief Counsel,  
Bureau of Internal Revenue.

Of Counsel:

B. H. NEBLETT,  
Division Counsel.  
E. C. CROUTER,  
H. A. MELVILLE,  
Special Attorneys,  
Bureau of Internal Revenue.

Received and Filed T.C.U.S. Dec. 8, 1948.



[Title of Tax Court and Cause.]

## REQUEST FOR DESIGNATION OF PLACE OF HEARING

Now comes the Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and in accordance with Rule 26 of the Court's Rules of Practice.

Requests that the Court designate that the hearing in the above-entitled proceeding be held at Los Angeles, California, or vicinity, in order to afford the respective parties an opportunity to produce evidence at the trial with a minimum expense.

/s/ CHARLES OLIPHANT, ECC  
Chief Counsel,  
Bureau of Internal Revenue.

Of Counsel:

B. H. NEBLETT,  
E. C. CROUTER,  
H. A. MELVILLE,  
Special Attorneys,  
Bureau of Internal Revenue. [5]

Received and Filed T.C.U.S. Dec. 8, 1948.

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[Title of Tax Court and Cause.]

## NOTICE OF PLACE OF HEARING

Notice is hereby given that the above entitled proceeding has been placed upon the Los Angeles, Calif., calendar of the Court for hearing on the merits in

due course either in the city named or in the vicinity thereof.

This notice refers only to the place of hearing and not to the time. The parties will be notified in due course of the exact time and place of hearing on the merits.

If either party desires that the hearing on the merits be held at some place other than the place above named, he must so notify the Court within 30 days from the date of this notice, and name the place he prefers. The Court will consider any requests filed as above provided, and if it decides that the place of hearing should be changed, it will so notify the parties.

Service of answer and request is hereby made.

Dated: December 9, 1948.

[Signed]            /s/ VICTOR J. MERSCH,  
Clerk.

To: A. Calder Mackay, Esq.

[6]

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[Title of Tax Court and Cause.]

## NOTICE OF SETTING PROCEEDING FOR HEARING—CIRCUIT CALENDAR

Take Notice that a Division of The Tax Court of the United States will sit in Room 229, U. S. Post Office and Court House, Los Angeles, Calif., beginning June 26, 1950.

Hearings will be held in all proceedings shown on the attached list. The list will be called **promptly** at 10:00 a.m., as indicated, and you will be expected

to answer the call at that time and be prepared for trial when reached. No continuance will be granted except for extraordinary cause. Failure to appear will be taken for cause for dismissal in accordance with the Rules of Practice, and you are in all other respects expected to be familiar with such rules.

Dated: April 27, 1950.

Respectfully,

/s/ VICTOR J. MERSCH,  
Clerk.

To: A. Calder Mackay, Esq.

[7]

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The Tax Court of the United States

Docket No. 23168

LINDSAY C. HOWARD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

### PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiencies set forth by the Commissioner of Internal Revenue in his notice of deficiency (LA:IT:90D:LHP) dated March 31, 1949, and as a basis of his proceeding alleges as follows:

1. Petitioner is an individual residing at 1230 Benedict Canyon Drive, Beverly Hills, California. The return for the period involved was filed with the Collector of the Sixth District of California.

2. The notice of deficiency (a copy of which is



attached and marked "Exhibit A") was mailed to the petitioner on March 31, 1949.

3. The taxes in controversy are income taxes for the calendar year 1946 in the sum of \$5,185.25.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The Commissioner erred in disallowing deductions for legal fees and expenses paid by petitioner [8] during the taxable year 1946 in the amount of \$5,393.01.

(b) The Commissioner erred in disallowing a depreciation deduction for the year 1946 in the amount of \$1,496.55.

5. The facts upon which the petitioner relies as a basis of this proceeding are as follows:

(a) In the year 1938 petitioner and his then wife, Anita Z. Howard, entered into a property settlement agreement. Shortly thereafter Anita Z. Howard obtained a divorce from petitioner in the State of Nevada, the decree of divorce incorporating therein said property settlement agreement. In accordance with the terms of that agreement, petitioner paid his former wife \$1,250.00 per month until January 1, 1942. The agreement required such monthly payments to be made until the remarriage of Anita Z. Howard.

(b) Subsequent to January 1, 1942, petitioner discontinued said monthly payments, as a result of which Anita Z. Howard commenced an action against petitioner in the Superior Court in and for the County of San Francisco, California, for the pur-

pose of establishing the Nevada decree as a judgment of the State of California and to recover sums due under the property settlement agreement incorporated therein.

(c) Petitioner filed an answer and a cross complaint in said action, alleging that (1) the obligation to make monthly payments had been terminated by reason of a subsequent Mexican common law marriage of Anita Z. Howard, and (2) the property settlement agreement had been procured by the fraud of Anita Z. Howard. Judgment in that proceeding after prolonged litigation, ultimately was rendered in favor of Anita Z. Howard. See *Howard vs. Howard*, 157 Pac. (2d) 874, 161 Pac. (2d) 681, and 163 Pac. (2d) 439.

(d) For attorneys' fees, costs and expenses in the proceedings referred to above, the petitioner paid the amount of \$5,393.01 during the tax year 1946. Petitioner is informed and believes that said amount is deductible from gross income under the provisions of Section 23 (a) of the Internal Revenue Code and that the Commissioner's disallowance thereof is erroneous and illegal.

(e) During the year 1946 sundry assets owned by petitioner in connection with his ranch (to-wit, a manager's house, furniture and linens) sustained depreciation in the amount of \$1,496.55. Petitioner is informed and believes that such depreciation is allowable as a deduction under the Internal Revenue Code and that the Commissioner's disallowance thereof is erroneous and illegal.

Wherefore, petitioner prays that this Court may

hear the proceeding and determine that the Commissioner erred in the particulars hereinabove set forth and grant to the petitioner such other and further relief, including refunds, as to it seems just and proper in the premises.

Dated May 13th, 1949.

Respectfully submitted,

/s/ A. CALDER MACKAY,  
/s/ ARTHUR McGREGOR,  
/s/ HOWARD W. REYNOLDS,  
/s/ ADAM Y. BENNION,  
Counsel for Petitioner.

Of Counsel:

/s/ NEIL S. McCARATHY

State of California,  
County of Los Angeles—ss.

Lindsay C. Howard, being first duly sworn, deposes and says that he is the petitioner above named; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge, except the matters which are therein stated to be upon information and belief, and that as to those matters he believes it to be true.

/s/ LINDSAY C. HOWARD

Subscribed and sworn to before me this 9th day of May, 1949.

[Seal] /s/ JOHN S. HOWARD,

Notary Public in and for said County and States.

My Commission expires Sept. 15, 1951.

## EXHIBIT "A"

Treasury Department, Internal Revenue Service  
417 So. Hill St., Los Angeles 13, Calif.

Office of Internal Revenue Agent in Charge

Los Angeles Division

LA:IT:90D:LHP

March 31, 1949

Mr. Lindsay C. Howard

1230 Benedict Canyon Drive

Beverly Hills, California

Dear Mr. Howard:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1946 discloses a deficiency of \$5,185.25, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return by permitting an early assess-

## Exhibit "A"—(Continued)

ment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,  
Commissioner,

By /s/ GEORGE D. MARTIN,  
Internal Revenue Agent in  
Charge.

Enclosures: Statement, Form of waiver.

## STATEMENT

LA:IT:90D:LHP

Mr. Lindsay C. Howard  
1230 Benedict Canyon Drive  
Beverly Hills, California

TAX LIABILITY FOR THE TAXABLE YEAR ENDED  
DECEMBER 31, 1946

	Deficiency
Income tax .....	\$5,185.25

In making this determination of your income tax liability careful consideration has been given to the report of examination dated November 17, 1948.

## ADJUSTMENTS TO NET INCOME

Net income as disclosed by return.....	\$77,582.23
Unallowable deductions:	
(a) Depreciation .....	\$1,496.55
(b) Legal expense .....	5,393.01      6,889.56
	<hr/>
Net income adjusted.....	\$84,471.79



## Exhibit "A"—(Continued)

## EXPLANATION OF ADJUSTMENTS

(a) The deduction of \$10,221.09 claimed for depreciation on ranch equipment is disallowed to the extent of \$1,496.55, representing depreciation on your personal residence and furnishings. Such amount constitutes a personal expense and is not deductible. Section 24(a)(1), Internal Revenue Code.

(b) The deduction of \$5,393.01 claimed for legal expense incurred in connection with settlement of alimony suit is disallowed as representing a personal expense. Section 24(a)(1), Internal Revenue Code.

## COMPUTATION OF ALTERNATIVE TAX

Net income adjusted .....	\$84,471.79
Less: Excess of net long-term capital gain over net short-term capital loss .....	10,161.78
Ordinary net income .....	\$74,310.01
Less: Exemptions .....	1,500.00
Balance, subject to surtax and normal tax.....	\$72,810.01
Tentative surtax .....	\$42,211.81
Tentative normal tax.....	2,184.30
Total tentative tax .....	\$44,396.11
Less 5% .....	2,219.81
Partial tax .....	\$42,176.30
Plus: 50% of \$10,161.78.....	5,080.89
Alternative tax .....	\$47,257.19

## COMPUTATION OF TAX

Net income adjusted.....	\$84,471.79
Less: Exemptions .....	1,500.00
Balance, subject to surtax and normal tax....	\$82,971.79
Tentative surtax .....	\$50,227.15
Tentative normal tax at 3%.....	2,489.15
Total tentative tax .....	\$52,716.30
Less 5% .....	2,635.82
Total normal tax and surtax.....	\$50,080.48

## Exhibit "A"—(Continued)

## Computation of Tax—(Continued)

Alternative tax .....	\$47,257.19
Less: Credit for tax paid to a foreign country.....	122.46
<hr/>	
Correct income tax liability.....	\$47,134.73
Income tax liability shown on return, account No. 9123450 .....	41,949.48
<hr/>	
Deficiency of income tax.....	\$ 5,185.25

Received and Filed T.C.U.S. May 18, 1949.

[Title of Tax Court and Cause No. 23168.]

## ANSWER

The Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1, 2, and 3. Admits the allegations contained in paragraphs 1, 2, and 3 of the petition.

4 (a) and (b). Denies that the respondent erred as alleged in subparagraphs (a) and (b) of paragraph 4 of the petition.

5 (a) to (e). Denies the allegations contained in Sub paragraphs (a) to (e) of paragraph 5 of the petition.

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ CHARLES OLIPHANT, ECC  
Chief Council,  
Bureau of Internal Revenue.

Of Counsel:

B. H. NEBLETT,  
Division Counsel.

E. C. CROUTER,  
H. A. MELVILLE,  
Special Attorneys,  
Bureau of Internal Revenue.

[9]

Received and Filed T.C.U.S. July 5, 1949.

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[Title of Tax Court and Cause No. 23168.]

## REQUEST FOR DESIGNATION OF PLACE OF HEARING

Now comes the Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and in accordance with Rule 26 of the Court's Rules of Practice.

Requests that the Court designate that the hearing in the above-entitled proceeding be held at Los Angeles, California, or vicinity, in order to afford



the respective parties an opportunity to produce evidence at the trial with a minimum expense.

/s/ CHARLES OLIPHANT, ECC

Chief Counsel,

Bureau of Internal Revenue.

Of Counsel:

B. H. NEBLETT,

E. C. CROUTER,

H. A. MELVILLE,

Special Attorneys,

Bureau of Internal Revenue.

[10]

Received and Filed T.C.U.S. July 5, 1949.

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[Title of Tax Court and Cause No. 23168.]

## NOTICE OF PLACE OF HEARING

Notice is hereby given that the above entitled proceeding has been placed upon the Los Angeles, Calif., calendar of the Court for hearing on the merits in due course either in the city named or in the vicinity thereof.

This notice refers only to the place of hearing and not to the time. The parties will be notified in due course of the exact time and place of hearing on the merits.

If either party desires that the hearing on the merits be held at some place other than the place above named, he must so notify the Court within 30 days from the date of this notice, and name the place he prefers. The Court will consider any requests filed as above provided, and if it decides that the

place of hearing should be changed, it will so notify the parties.

Service of answer and request is hereby made.

Dated: July 11, 1949.

/s/ VICTOR J. MERSCH,

Clerk.

To: A. Calder Mackay, Esq.

[11]

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[Title of Tax Court and Cause No. 23168.]

NOTICE OF SETTING PROCEEDING FOR  
HEARING—CIRCUIT CALENDAR

Take Notice that a Division of The Tax Court of the United States will sit in Room 229, U. S. Post Office and Court House, Los Angeles, Calif., beginning June 26, 1950.

Hearings will be held in all proceedings shown on the attached list. The list will be called promptly at 10:00 a.m., as indicated, and you will be expected to answer the call at that time and be prepared for trial when reached. No continuance will be granted except for extraordinary cause. Failure to appear will be taken for cause for dismissal in accordance with the Rules of Practice, and you are in all other respects expected to be familiar with such rules.

Dated: April 27, 1950.

Respectfully,

/s/ VICTOR J. MERSCH,

Clerk.

To: A. Calder Mackay, Esq.

[12]

The Tax Court of the United States

MINUTES OF PROCEEDINGS

Date: July 13, 1950. Place: Los Angeles, Calif.  
Docket Nos. 20860-23168.

Proceeding: Lindsay C. Howard.

Assigned to: Judge Ernest H. Van Fossan, Division No. 9.

Counsel for Petitioner: A. Calder Mackay, Esq.,  
and Adam Y. Bennion, Esq., 728 Pacific Mutual  
Bldg., 523 West Sixth St., Los Angeles 14, Calif.

Counsel for Respondent: H. A. Melville, Esq.

Stenographic Reporter: Dorothy Clark.

Hearing: 9:30 - 10:05 a.m. Sub.

Transcript Ordered: Yes.

On the merits: Yes.

Filed at hearing: Stipulation of Facts.

Petitioner's brief: August 28, 1950. Respondent's  
brief: August 28, 1950. Replies: September 12, 1950.

Witness for Petitioner: Lindsay C. Howard.

Respondent's Exhibits: "A" Income Tax Return  
—1943; "B" Income Tax Return—1944; "C" In-  
come Tax Return—1945; "D" Income Tax Return  
—1946.

/s/ MARY Y. ROBERTS,  
Acting Deputy Clerk.

[13]

[Title of Tax Court and Causes Nos. 20860-23168.]

### STIPULATION OF FACTS

It is hereby stipulated by and between the parties in the above entitled proceedings, through their respective counsel, as follows:

1. Petitioner and Anita Z. Howard were married in 1925. On August 23, 1938, the executed a property settlement agreement, a copy of which is attached hereto, marked Exhibit 1-A, and made a part hereof. On November 5, 1938, petitioner and Anita Z. Howard were divorced by a decree of the Second Judicial District Court of the State of Nevada in and for the County of Washoe, a copy of which is attached hereto, marked Exhibit 2-B, and made a part hereof.

2. Petitioner made the payments to Anita Z. Howard of \$1,250.00 per month, as specified in said property settlement agreement, from August 1938 through the calendar year 1941, and then discontinued said payments.

3. Thereupon, Anita Z. Howard commenced an action against petitioner in the Superior Court of the State of California in and for the City and County of San Francisco, to recover the monthly payments alleged to be due her under [14] the terms of said property settlement agreement, and praying that the Nevada decree be established as a foreign judgment and enforced by order of the California court.

4. Petitioner filed an "Answer and Cross-Complaint" in said action, denying liability upon two grounds:

(a) That Anita Z. Howard had remarried and hence his obligation to make monthly pay-

ments had terminated under the terms of the property settlement agreement; and

(b) That the property settlement agreement was null and void, having been procured by the fraud and deceit of said Anita Z. Howard, in that during their married life and prior to the execution of said agreement she had represented to petitioner that she had been a virtuous woman of good moral character and a faithful wife, whereas in truth and fact for four years prior to the execution of said agreement she had been an adulterous woman and an unfaithful wife to the plaintiff, unbeknownst to him.

Said cross-complaint prayed for the cancellation and annulment of said property settlement agreement and that portion of the decree of the Nevada court which purported to approve and adopt the same.

5. Anita Z. Howard filed a demurrer to said Answer and Cross-Complaint, which was sustained by the Superior Court. Said decision was reversed by the District Court of Appeal, First District, Division 2, California, on April 24, 1945, in *Howard vs. Howard*, 157 P. (2d) 874; but was affirmed by the Supreme Court of California on November 27, 1945, in *Howard vs. Howard*, 163 P. (2d) 439. Said opinions by the District Court of Appeal and the Supreme Court of California, and the facts set forth therein, are hereby incorporated herein by this reference and made a part hereof.

6. Petitioner was commissioned a Captain in the United States Army on or about April 27, 1942. On



or about November 20, 1943, a General Court Martial was appointed to try petitioner on a charge of violating the 95th Article of War, the specification of alleged violation being that he—

“\* \* \* did, without due cause, from about 1 January 1942, to about 17 November 1943, dishonorably fail, refuse, and neglect to pay to Anita Zabala Howard (divorced wife of said Captain Lindsay C. Howard, the sum of One Thousand Two Hundred Fifty (\$1,250.00) Dollars per month as and for the support of said Anita Zabala Howard, which sum the said Captain Lindsay C. Howard was ordered to pay by a valid decree, dated 5 November 1938, rendered by a court of competent jurisdiction in the case of Anita Zabala Howard, Plaintiff, versus Lindsay C. Howard, Defendant, same being Cause No. 60623, in the Second Judicial District Court of the state of Nevada, in and for the County of Washoe, Nevada.”

Said General Court Martial tried the case on December 13 and 14, 1943, and on the latter date petitioner was found not guilty and was acquitted of the specification and the charge.

7. As attorneys' fees, expenses and court costs in said court martial proceedings and in said litigation in the Superior Court, District Court of Appeal and Supreme Court of California, petitioner paid the following amounts:



1943

Date of Check	To Whom Issued	Check No.	Amount
2-23-43	Hart & Hart.....	7737	\$ 52.00
3-16-43	Walter McGovern .....	7761	197.00
5- 5-43	Williams & Williams.....	7790	25.00
5-17-43	Hart & Hart (Shorthand, etc. In re: deposition) .....	7804	13.09
6-17-43	Walter McGovern .....	7830	63.75
8- 5-43	Baker, Selby & Ravenel (Attorneys in Washington).....	7855	522.80
9-14-43	Walter McGovern .....	7890	5,000.00
12- 7-43	Walter McGovern (Service of Edward Bergner).....	7984	79.50
12-13-43	Walter McGovern (Disbursements— Howard vs. Howard).....	7991	489.34
12-16-43	Walter McGovern (Expense of Howard vs. Howard).....	7995	525.43
12-23-43	Walter McGovern .....	8004	50.00
12-29-43	Walter McGovern .....	8013	3,000.00
			<hr/> \$10,017.91

1944

Date of Check	To Whom Issued	Check No.	Amount
1- 4-44	Walter McGovern .....	8017	\$ 253.73
2- 1-44	Walter McGovern .....	8036	195.75
3-27-44	Crocker 1st Nat'l Bank (In re: Howard vs. Howard).....	8069	150.00
3-31-44	Gus Ringole .....	8074	2,550.00
4- 3-44	Otton J. Bauer (Howard vs. Howard —Transcript on Appeal).....	8078	265.00
4- 3-44	Walter McGovern (Telephone— Howard vs. Howard).....	8077	31.26
5- 3-44	Notary Fee .....	Petty Cash	.50
5- 4-44	Fee to file Revocation of Power of Attorney No. 8092.....	\$10.00	
	Refund .....	7.00	3.00
6-12-44	Notary fees .....	8110	2.00
			<hr/> \$3,451.24

1946

Date of Check	To Whom Issued	Check No.	Amount
	Walter McGovern .....		\$ 5,000.00
	Printing petition for rehearing.....		92.21
	Costs in trial court.....		196.80
	Costs on appeal.....		100.00
	Release of attachment.....		2.00
	Recording satisfaction of judgment.....		2.00
			<hr/> \$ 5,393.01

The parties do not intend by this paragraph to allocate any of said fees, expenses and costs as between said court martial proceedings and said litigation.

Dated July 12, 1950.

/s/ A. CALDER MACKAY,

/s/ ADAM Y. BENNION,  
Counsel for Petitioner.

/s/ CHARLES OLIPHANT,

Chief Counsel,  
Bureau of Internal Revenue,  
Counsel for Respondent.

## EXHIBIT 1-A

### PROPERTY SETTLEMENT AGREEMENT

This Agreement made and entered into, in duplicate, this 23rd day of August 1938, at San Francisco, California, by and between Anita Z. Howard, First Party, and Lindsay C. Howard, Second Party,

Witnesseth

That Whereas, said parties hereto intermarried on

## Exhibit 1-A—(Continued)

the 1st day of June, 1925, and ever since have been and now are husband and wife; and

Whereas, certain differences have arisen between them which are irreconcilable and they have been since February 6th, 1937, and now are, living separate and apart; and

Whereas, said parties now desire to settle permanently their respective property rights; and

Whereas, there are three minor children, the issue of said marriage, to-wit: Mary Lynette Howard, of the age of twelve (12) years, Lindsay Coleman Howard, Jr. of the age of eleven (11) years and Peter Stewart Howard, of the age of six (6) years; all of said children being now in the care and custody of the said first party; and

Whereas, said parties hereto desire, in addition to settling and determining their respective property rights, to provide for the care and custody and maintenance and education of said minor children, and each party hereto hereby acknowledges that she (he) is acting under the advice and direction of his (her) respective attorneys and prior to the entering into of this agreement each has had a complete and full understanding of all matters relating to their respective property and property rights and marital status and their respective claims thereto and thereunder; and

Whereas, since the separation of the said parties hereto Messrs. Cooper, White & Cooper have continuously since February, 1937, acted as attorneys for said first party, and have attempted together

## Exhibit 1-A—(Continued)

with the attorney for said second party to effect a reconciliation between the parties, and have negotiated and consummated this settlement of their property rights and have prepared this agreement, and have received no compensation whatever therefor,

Now, Therefore, in order to effect a full and complete settlement for all time as between them of matters and things relating to the property, property rights, claims and demands of each against the other, and the claims and demands of the first party for support, maintenance or alimony and for the support, maintenance, care and education of their said minor children, It Is Hereby Mutually Agreed:

1. That the said three minor children of the parties hereto shall remain in the care and custody and control of both parties as hereinafter provided.

2. That the second party shall be entitled to have Mary Lynette Howard and Lindsay Coleman Howard, Jr., with him for one-half of the time, and Peter Stewart Howard with him for one-half of the said minor child's vacation period, and each party shall be entitled in addition to see and visit said children at all reasonable times when with the other.

3. That all of the property of the second party has been and is his separate property and that at no time during the coverture has there been any community property or property jointly owned, except household furniture and silverware received as wedding gifts.

That the first party and her counsel are fully advised that the income of the second party is derived

## Exhibit 1-A—(Continued)

in large measure from the automobile industry, that they have had access to his accounts and records and are informed as to the past and present income and that the provisions hereinafter made for the support and maintenance of the first party and their children are made advisedly and with full knowledge that the income of said second party is subject to extreme fluctuation.

4. That the second party hereto hereby undertakes and solemnly promises and agrees to pay to said first party during her natural life, or until she remarries, a monthly sum of \$1,250.00 payable on the first day of each and every month commencing August 1st, 1938, which sum shall be for the use and benefit of said first party in the maintenance of herself and all said minor children while actually living with her and from which she shall bear and pay the board of said three minor children and the rental of a home or residence or apartment for herself and said minor children and the nurse to be furnished by said second party as hereinafter set forth for the benefit of said minor child, Peter, and she shall pay the room and board of said nurse and her son Peter's board until he goes to boarding school when his board shall be governed by the provisions of Paragraph 6 hereof, and said first party shall also pay all her personal expenses of every kind and nature. It being expressly understood that said monthly payments shall not be diminished during her natural life unless she shall remarry, even though the said children, or



## Exhibit 1-A—(Continued)

any thereof, shall not be with her, or the nurse mentioned shall not be furnished or be no longer necessary, but the understanding and agreement of second party is and is intended to be absolute for the payment of said monthly sums to first party during the natural life of said first party until and unless only she remarries.

5. That said second party agrees to furnish a nurse for said son, Peter, until he arrives at the age where the services of such nurse are not necessary, and said second party agrees to pay the salary of said nurse during such period, and of any successor or successors of said nurse in the performance of said services.

6. That in addition to the foregoing, said second party agrees to pay for the schooling and board while at school and education of all said minor children including expenses, travelling and otherwise, in attending school and at all times during their respective minorities to pay for their clothes and to furnish them reasonable pocket money and to pay all bills and charges for medical and surgical and dental and hospital care.

That in regard to the schooling of said children, and the particular schools which they shall attend, the same shall be determined from time to time by the parties hereto, and in the event of a disagreement, the decision of Charles S. Howard, the father-in-law of first party, and the father of second party, shall be determinative of the question and bind both parties hereto.



## Exhibit 1-A—(Continued)

7. It is further expressly understood and agreed that said second party shall pay all unpaid bills incurred by said first party up to June 1st, 1937, of every kind, and all unpaid bills for the direct benefit and support of said children since said time to the date of this agreement, but shall not be called upon to pay any unpaid personal bills of first party incurred by her between June 1st, 1937 and May 1st, 1938, but said second party agrees in addition to pay the personal bills of first party in the sum of \$1,156.00 incurred by her since May 1st, 1938, and said first party warrants that her personal unpaid bills incurred since May 1st, 1938, will not exceed the said sum of \$1,156.00, and if they do, first party shall exclusively bear and pay the excess.

8. That the said parties hereto hereby agree to make a fair division between them of the furniture, furnishings and personal effects and other personal property now contained in the residence at No. 1200 Easton Drive, Burlingame, California, and each party shall own as her (his) absolute separate property that portion awarded to her (him), and in the event of any disagreement between the parties hereto as to the portion of said property which each shall take, the matter shall be referred to said Charles S. Howard who shall make such division as he deems just and both parties agree to abide by his decision in the premises.

9. That said first party agrees in consideration of the execution of this agreement by second party, to execute and deliver to said second party a Deed

## Exhibit 1-A—(Continued)

granting and conveying unto said second party absolutely and forever the said home and premises at No. 1200 Easton Drive, Burlingame, California, and all other property now in the name or possession of said second party, without reservation of any kind.

10. Said first party further agrees that she will not hereafter for her own personal use or benefit charge any bills of any kind against second party, or involve second party's credit in any manner, and agrees to pay for all domestic and other help hired by her, other than the nurse mentioned herein, and for all merchandise and other supplies furnished her.

11. Said second party agrees to pay said attorneys, Cooper, White & Cooper, for their legal services rendered to said first party, and it is expressly understood and agreed that said second party shall not be called upon for any further payment for legal services whatsoever, and in the event action of divorce shall hereafter be instituted or commenced by said first party against said second party, or by said second party against said first party, the first party shall, in any such action, bear and pay her own attorneys fees and costs thereinabout and she will not ask or demand from said second party any counsel fees or costs whatsoever in the premises.

12. That in the event of any divorce being granted to either party hereto at any time hereafter, and the subsequent remarriage of said first party, and not before, or otherwise, the payment of said \$1,250.00 per month shall immediately and absolutely terminate upon such remarriage, but second party agrees to con-

## Exhibit 1-A—(Continued)

tinue to provide for, support and educate said minor children and further agrees that after the remarriage of first party, second party will pay to first party the sum of Seventy-five Dollars (\$75.00) per month for the room and board of each of said minor children when living with or visiting said first party.

13. In the event that a decree of divorce should be granted to either party hereto it is hereby agreed that neither party will ask or accept any provision in said decree of divorce so granted in respect to division of income or property of the parties hereto or to the support of either party hereto which shall change, modify, increase or decrease the obligations or rights of the respective parties as herein set forth; but in any decree of divorce, interlocutory and/or final, hereafter granted, this agreement may be filed in said action and made a part of said decree or decrees and confirmed and approved thereby and said court may command and decree the payments thereunder and the performance thereof by the respective parties and retain jurisdiction at all times for the enforcement thereof by all legal process.

14. This agreement is made at San Francisco, California, and is to be construed according to the laws of the State of California, and may be enforced by all lawful means in this State and elsewhere where the parties may be found.

15. In consideration of the mutual promises herein set forth, expressly subject to all rights hereunder, said parties hereto do hereby release, quitclaim and assign one to the other any and all interest of each

## Exhibit 1-A—(Continued)

and every kind which either has or to which either might succeed in and to their respective separate properties.

16. It is further agreed by and between the parties hereto that from and after the date of this agreement, all income or property of any kind acquired by either of the parties hereto shall be the separate property of the person so acquiring said income or property.

17. It is the intention and purpose of the foregoing Paragraph 13 that from and after the date of this agreement the parties hereto shall not have any right, title and interest either as heir at law, husband or wife, in and to the property of the other, save and except of course as in this agreement provided. Said respective parties hereto expressly reserve all their rights hereunder and all lawful means of enforcing the same against the property of the other.

18. It is further agreed that no one of said three minor children of the said parties hereto shall be removed from the State of California without the written consent of both parties.

19. In consideration of the foregoing, and subject to all the provisions hereof, and except as otherwise herein provided, said first party does hereby release and forever discharge second party of and from any and all claims and demands which she now has or may or might hereafter have against said second party from any and all claims upon the separate property of said second party, other than



## Exhibit 1-A—(Continued)

her claims hereunder, and each party does hereby relinquish and renounce now and forever any right or interest by succession, heirship or otherwise in or to any property whatsoever of the other (except of course as herein provided) including the right to act as executor or administrator of the estate of the other and each party does covenant and agree with the other that he (she) will not at any time hereafter assert any right, title or interest as husband or wife or heir to the property of the other, except as to the rights conferred by this agreement.

20. This agreement shall be and become effective as of the date of the execution hereof, and shall bind and benefit the parties hereto and their respective heirs, legatees, devisees and personal representatives and this agreement is acknowledged by each of the parties hereto to be supported by proper, sufficient and equitable consideration, and in the event of any divorce between them at any time, the court granting the same is requested to approve and ratify this agreement and to order and decree all payments to be made hereunder and the performance of all provisions hereof to the full extent that the law may permit.

21. Each party hereto agrees, on request of the other, to execute and deliver to the other such further instruments and conveyances as may be necessary or proper to fully carry out and effectuate the objects, purposes and provisions of this agreement.

In Witness Whereof, the parties hereto have here-

## Exhibit 1-A—(Continued)

unto set their hands, in duplicate, the day and year first above written.

/s/ ANITA Z. HOWARD,  
First Party.

/s/ LINDSAY C. HOWARD,  
Second Party.

Witness to the signature of first party:

COOPER, WHITE & COOPER,  
By /s/ SHELDON G. COOPER,  
Attorneys for First Party.

Witness to the signature of second party:

/s/ JOHN FRANCIS NEYLAN,  
Attorney for Second Party.

## EXHIBIT 2-B

In the Second Judicial District Court of the State of  
Nevada in and for the County of Washoe

No. 60623—Dept. No. 1

ANITA ZABALA HOWARD,

Plaintiff,

vs.

LINDSAY C. HOWARD,

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND DECREE

This cause having come on regularly for trial before this Court the twenty-first day of October, 1938,



**Exhibit 2-B—(Continued)**

the plaintiff appearing personally and by her attorneys, Price and Merrill. The defendant having entered a general appearance in the action and being represented in Court by his attorney, William M. Kearney; evidence having been presented in support of the allegations of the complaint and the matter having this day been submitted to this Court; this Court, after duly considering the evidence and the files in this action, finds that all of the allegations of the complaint are true and that the defendant has been guilty of wilful desertion of the plaintiff for a period of more than one year prior to the date of commencement of this action.

As conclusions of law the Court finds that the plaintiff is entitled to an absolute and final decree of divorce from the defendant upon the ground of desertion; and is entitled to the approval and adoption and a decree and order of enforcement of that certain written agreement entered into by and between the plaintiff and the defendant dated August 23, 1938, mentioned in the plaintiff's complaint, a copy of which was introduced in evidence and marked "Plaintiff's Exhibit A" and is now before the Court.

It is Therefore Hereby Ordered, Adjudged and Decreed that the plaintiff be and she hereby is granted a decree of divorce, final and absolute in form and effect, from the bonds of matrimony now and heretofore existing between the plaintiff and the defendant, and restoring said parties to the status of unmarried persons.

## Exhibit 2-B—(Continued)

It Is Further Ordered, Adjudged and Decreed that that certain written agreement made and entered into by and between the plaintiff and the defendant under date of August 23, 1938, a copy of which was introduced in evidence in this case and marked "Plaintiff's Exhibit A" and is now before this Court, be and it is hereby expressly made a part of this decree as though fully set forth word for word herein, and the same is approved and ratified and adopted by this Court in its entirety, and performance thereof by both the plaintiff and the defendant as agreed by them therein respectively is hereby expressly ordered and adjudged and is hereby made a mandate of the Court enforceable by all the lawful powers and process thereof.

Done in Open Court this fifth day of November, 1938.

A. J. MAESTRETTI,  
District Judge.

[Endorsed]: Filed 1938 Nov. 5 p.m. 12:15. E. H. Beener, Clerk. By B. Ellsworth, Deputy.

Filed T.C.U.S. July 13, 1950.

The Tax Court of the United States

Docket Nos. 20860 - 23168

LINDSAY C. HOWARD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Court Room No. 229, United States Post Office and  
Court House Bldg., Los Angeles, Calif.

Thursday, July 13, 1950—9:30 a.m.

(Met pursuant to notice.)

Before: Honorable Ernest H. Van Fossan, Judge.

Appearances:

A. Calder MacKay and Adam Y. Bennion, appearing for Petitioner.

H. A. Melville, (Hono. Charles Oliphant, Chief Counsel, Bureau of Internal Revenue), appearing for the Respondent. [1\*]

PROCEEDINGS

The Clerk: Docket Numbers 20860 and 23168, Lindsay C. Howard.

The Court: I understand from counsel this case will take at most a half hour. We will proceed with this case at this time.

The Clerk: State your appearances, please.

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\* Page numbering appearing at top of page of original certified Reporter's Transcript.

Mr. Bennion: A. Calder Mackay and Adam Y. Bennion.

Mr. Melville: H. A. Melville.

Mr. Bennion: If your Honor please, the taxes in this case are income tax for four years, 1943 through 1946, in the aggregate amount of a little in excess of \$15,000. There are two questions involved.

The first is whether or not the Commissioner erred in disallowing certain attorneys' fees and expenses and costs incurred in certain legal proceedings which I shall briefly discuss.

The Petitioners, Lindsay C. Howard and Anita Z. Howard, were married in 1925. In 1938 they executed a property settlement agreement under the terms of which Petitioner agreed to pay Mrs. Howard the sum of \$1,250 per month until he remarriage. A few weeks later the parties were divorced and the separation agreement—property settlement agreement, that is—was incorporated and approved in the decree of divorce. [3]

The payments under the contract were made by the Petitioner for 1938 through the year 1941, at which time the payments were discontinued. Shortly thereafter Anita Z. Howard brought an action in the Superior Court of California against the Petitioner for the monthly sums due. The Petitioner filed an answer and cross-complaint in that proceeding alleging that his obligation had terminated on two grounds: first, that Anita Z. Howard had remarried in the meantime, and that the initial property settlement agreement was obtained by fraud of Anita Z. Howard. That proceeding consumed several years,

and finally the Superior Court sustained the demurrer of Anita Z. Howard and ruled in her favor.

That decision was reversed by the District Court of Appeal of California, and subsequently the Supreme Court of California reversed the District Court of Appeals and affirmed this Superior Court so that Anita Z. Howard finally prevailed in the action.

During the course of the action Anita Z. Howard, through her attorneys, took the matter up with the War Department. The Petitioner had become a Captain in the United States Army. Court-martial proceedings were instituted against him charging a violation of the 95th Article of War in that he had failed to pay the monthly payments in accordance with the Nevada divorce decree. The court-martial proceedings were very bitterly contested, and after a hearing Petitioner was [4] acquitted and found not guilty of the charge.

As attorneys' fees in these two proceedings the Petitioner paid certain sums which we have stipulated in a stipulation of facts, and he also paid certain court costs and expenses. The Petitioner maintains in this case that these payments, the attorneys' fees and the expenses and court costs, were deductible either as ordinary and necessary business expense or as expenses incurred in the production or collection of income or in the management conservation or maintenance of property held for the production of income.

In two cases—no doubt your Honor will recall—reviewed by the Court, the Tax Court recently held that the attorney fees incurred by a divorced wife in



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In two cases—no doubt your Honor will recall—reviewed by the Court, the Tax Court recently held that the attorney fees incurred by a divorced wife in

order to secure alimony or increase alimony constituted deductible expenses; and in the course of those opinions the Court very clearly held that such expenses were not personal in that there was no issue about the family or marital relationship, that having been terminated by the divorce.

Similarly in this case there was no question in these proceedings with respect to the divorce itself, and the Petitioner maintains that the expenses of this character are no more than personal insofar as the husband is concerned than they were in the case of the divorced wife.

The Tax Court has also held that expenses paid to retain income are deductible equally as well as expenses paid [5] to produce income in the first instance, and we believe that that situation obtains here.

The second issue has to do with depreciation on a house and furnishings on the Petitioner's ranch. The notice of deficiency disallowed the depreciation that was claimed on these items on the ground this constituted a personal residence of the Petitioner, and the Petitioner challenges that termination; and we believe the evidence will show that the house is not his personal residence. Those are the issues before the Court.

The Court: Do you wish to state for the Government?

Mr. Melville: Mr. Bennion has quite thoroughly covered the points, your Honor. I just wish to elaborate a little bit. The court-martial proceeding—while the Captain was acquitted of the charge, it is not to be understood from that that he was held not respon-

sible and liable for the payment of the alimony, the charge being conduct unbecoming to an officer and a gentleman; and by the court-martial proceeding they simply held that his conduct was not unbecoming to an officer and a gentleman. He was simply asserting his legal rights to contest his liability to pay the alimony which the civil courts held he was required to pay.

The two recent cases which Mr. Bennion referred to, wherein they held that the amounts expended——

The Court: It is not necessary to discuss the case [6] at this time. Just state the issues.

Mr. Melville: Regarding the personal residence issue, that is the ranch house that depreciation has been claimed on and disallowed. The Government's position simply is that while he did have a personal residence elsewhere, he had a personal residence on the ranch or had a ranch house which he could go to any time he wanted to, and it was there exclusively for his purposes as a retreat, as it were, and we feel that the depreciation on that is a personal matter and is not allowable.

The Court: I understand you have a stipulation of most of the facts?

Mr. Bennion: Yes. At this time I should like to offer the original and two copies of the stipulation of facts which covers the circumstances that I have related and sets forth the detail of the expenses and fees that are in controversy.

The Court: It will be received.

Mr. Mackay: I call Mr. Howard, please.  
Whereupon,

## LINDSAY C. HOWARD

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows: [7]

The Clerk: Will you state your name for the record, please?

The Witness: Lindsay C. Howard.

## Direct Examination

By Mr. Mackay:

Q. Mr. Howard, what was your business around the beginning of 1942?      A. Automobile.

Q. Whereabouts?

A. San Francisco and Los Angeles.

Q. Had you lived in that district quite some time?

A. I had.

Q. I call your attention, Mr. Howard, to page four of a stipulation which we have just filed here. I call your attention to an item there about midway down, a \$522.80 check number 7855 dated September 5, 1943, issued to Baker, Selby and Ravenal, attorneys in Washington. I will ask you what those attorneys did for you?

A. That was expense covering the court-martial proceedings.

Q. The next item—I will withdraw that at the moment. Did they work on any other thing other than the court-martial proceedings?

A. That was all. [8]

Q. I call your attention to the next one, which is a payment dated September 14, 1943, a \$5,000 by check 7890 issued to Walter McGovern; and I will ask you if Walter McGovern was your attorney?



(Testimony of Lindsay C. Howard.)

A. He was.

Q. Did he represent you both in the civil suits as well as in the court-martial?

A. That's correct.

Q. Do you have any recollection as to what that was paid for, that \$5,000?

A. The \$5,000 was for expense on the court-martial and the civil case, and also as a retainer in both cases.

Q. Can you make any allocation or any recollection of what portion of that was for court-martial and what portion for the other?

A. Well, my judgment would be that it was about half and half.

Q. I see. He was handling both cases at the same time?

A. That's right.

Q. I call your attention to an item there of \$3,000 for which a check number 8013 dated 12/29/43 and made out to Walter McGovern—I will ask you what that was for?

A. That was the final payment on the court-martial expense.

Q. I shall call your attention to an item under 1944, [9] which is a check number 8074 for \$2,550 and is dated 3/31/44 to Gus Rinco. Will you please tell the Court who he was and what he did?

A. He was an ex-Colonel and that was solely for the court-martial proceedings.

Q. I have asked you about certain items there. Now, what were the other items on this sheet paid for?



(Testimony of Lindsay C. Howard.)

A. They were for attorneys' expenses in connection with the court-martial proceedings.

Q. I have asked you about the court-martial—I mean other than those for the court-martial that you have identified?

A. The others were for the civil proceedings.

Q. Mr. Howard, I will ask you if at the time Mrs. Howard brought that suit against you in the Superior Court, whether or not attachments were made on your business?

A. On my business and my residence.

Q. Where was your residence?

A. In San Mateo, California.

Q. Were you living there in your residence at that time?      A. I was not.

Q. How long since had you lived in that place?

A. I hadn't lived in it since—I imagine it had been vacant about a year.

Q. A year?      A. Yes. [10]

Q. What had you been holding that for?

A. Trying to rent it or sell it.

Q. Where were you living in the meantime there?

A. I was living in San Francisco.

Q. A home or apartment?

A. Apartment.

Q. During the years involved here, 1943, '44, '45 and '46, did you maintain a residence here in Los Angeles in Beverly Hills?      A. I did.

Q. Do you still maintain that?      A. I do.

Q. Do you vote in Los Angeles?      A. I do.

Q. Los Angeles County, I mean.      A. I do.

(Testimony of Lindsay C. Howard.)

Q. Do you have a ranch in Ventura County?

A. I have.

Q. There is a building on that—I beg your pardon. When you purchased that ranch was there a house on it?

A. There was.

Q. What do you use that house for? What did you use that house for?

A. We used it very little, as a matter of fact. I go to the ranch, I imagine, at least twice a week and I probably [11] go in the house maybe once a month, because it is only an hour to the ranch up there and we spend sometimes in the summer time—we might spend two or three weeks there.

Q. Do you regard that as your residence?

A. I do not.

Q. When you go to the ranch where do you get your meals?

A. All at the bunkhouse.

Q. What do you mean, “the bunkhouse”? Is it separate and apart from the house?

A. A separate building.

Q. Give a little description of what the bunkhouse is used for.

A. That is to feed the ranch hands and also to quarter them.

Q. I see. Do you have a foreman there?

A. I have not.

Mr. Mackay: That is all.

#### Cross-Examination

By Mr. Melville:

Q. When did you enter the Army, Mr. Howard?

A. In 1942, I believe it was—in March, I think.

(Testimony of Lindsay C. Howard.)

Q. At that time what was your rank?

A. Captain.

Q. When did you get out of the Army? [12]

A. It was September of '43.

Q. On what terms or basis were you released from active duty?      A. Medical discharge.

Q. Your commission as a Captain was a reserve commission, I take it?      A. No.

Q. You mean to testify that you were given a regular commission as a Captain?

A. Well, I imagine it was a reserve commission, then.

Q. You don't know?

A. No. I went in as a Captain.

Q. You came out as a Captain?

A. That's right.

Q. You weren't retired because of your physical condition, were you?      A. I was——

Mr. Mackay: Is that material?

Mr. Melville: It might be. I don't know.

Q. (By Mr. Melville): Were you retired as a Captain? Are you drawing retired pay?

A. No, I am not.

Q. Were you given a medical discharge, released from active duty? [13]      A. That's correct.

Q. While you were in the Army, Mr. Howard, you knew as an officer, reserve officer, did you not, that when an enlisted man or officer was brought before court-martial that they made counsel available to you?      A. That's right.

Q. Without any cost to you?

(Testimony of Lindsay C. Howard.)

A. That's right.

Q. When was the court-martial proceeding first instituted against you?

A. I haven't got those exact dates.

Q. Well, do you have the copy——

Mr. Mackay: We will stipulate to that here. On or about November 20, 1943, general court-martial was appointed. I am on page three.

Q. (By Mr. Melville): Inasmuch as the court-martial was appointed, according to the stipulation, on or about November 20, 1943, why did you testify that prior thereto—namely, on August 5, 1943—you paid \$522.80 to Baker, Selby and Ravenal in Washington in connection with the court-martial?

A. The court-martial proceedings started in Washington and I didn't have anybody appointed as counsel, and this was to try to stop the court-martial proceedings.

Q. Where were you stationed at the time? [14]

A. Washington.

Q. Although the court-martial was not convened in your case or ordered in your case until November, way back in August you were using civil counsel to try to stop it; is that correct?

A. That's correct.

Q. What did they do for you?

A. Well, they were threatening to court-martial me in Washington unless I made the payment.

Q. What did Baker, Shelby and Ravenal do for you?

A. Advised me not to make the payment.

(Testimony of Lindsay C. Howard.)

Q. What else?

A. And they had correspondence with the War Department; and the result was that I was transferred to San Francisco so that I could go on with my civil case.

Q. For that they charged you \$522.80?

A. They did.

Q. Then in September you testified—September 14, 1943—you paid \$5,000 to Walter McGovern. Was your testimony that that was partly for the court-martial and partly for the civil suit?

A. That's correct.

Q. How do you know?

A. Mr. McGovern told me that.

Q. Did he render you any statement for that \$5,000? [15]

A. He did.

Q. Did he segregate it as between the court-martial proceedings and the civil proceedings?

A. No, he didn't.

Q. Do you know if your book of account is in court this morning?

A. I don't know.

Mr. Melville: Mr. Mackay, is it?

Mr. Mackay: I believe it is.

Mr. Melville: Will you produce it, please?

Mr. Mackay: I can find it for you.

Mr. Melville: Mr. Mackay, may it be stipulated that the book you have handed me is the book of account kept for Mr. Howard?

Mr. Mackay: That's right.

Q. (By Mr. Melville): Mr. Howard, I call your attention to this book and to the date on September



(Testimony of Lindsay C. Howard.)

14, 1943, having to do with check number 7890 and ask you to read the——

Mr. Mackay: You may read it in.

Mr. Melville: The entry in the book of Mr. Howard which is before the witness, reads: "Walter McGovern, legal services, Howard versus Howard, \$5,000. Bill dated 9/14/43."

Q. (By Mr. Melville): The court-martial proceedings wasn't entitled Howard versus Howard? [16]

A. They were as far as Mr. McGovern was concerned. All his bills were made out the same way.

Q. What was your testimony with respect to the \$3,000 item in December of '43, an amount which you paid to Walter McGovern?

A. That was solely for court-martial.

Q. Why do you say "solely for court-martial"?

A. Because that bill was presented after the court-martial proceedings were concluded.

Q. It was also presented while your civil proceeding was pending, wasn't it? A. That's correct.

Q. Did he make any segregation in that bill as between court-martial and Howard versus Howard?

A. I don't believe so.

Q. Then you have no way of knowing but this was just an additional fee for legal services rendered?

A. Except at the time he presented the bill that is what he told me.

Q. Altogether, according to your testimony, how much did you spend to defend that court-martial proceeding?

(Testimony of Lindsay C. Howard.)

A. Oh, I wouldn't have any idea what the total amount was.

Q. While you were in the Army how many residences did [17] you maintain?

A. Never over one at a time.

Q. How many do you maintain now?

A. Just one.

Q. That is the one in Beverly Hills?

A. That's correct.

Q. When did you acquire that? A. 1942.

Q. When did you dispose of your San Mateo residence?

A. I don't recall just what year that was.

Q. When were you living in San Francisco in an apartment?

A. I lived in San Francisco for—— it was either two or three years after the divorce proceedings.

Q. Fix that as to years.

Mr. Mackay: We stipulate for your information '38 is when he got his divorce.

Q. (By Mr. Melville): Your testimony on direct was you had a residence in San Mateo but you didn't live there because you had an apartment in San Francisco at which you lived? A. That's correct.

Q. When was that?

A. From 1938 to '40, I think it was.

Q. Is it your testimony that at no time in your life have [18] you maintained more than one residence?

A. That is right.

Q. This ranch that you acquired in Ventura County has bunkhouses on it for the help, has it not?

(Testimony of Lindsay C. Howard.)

A. That is correct.

Q. It has a foreman's house, has it not?

A. That is correct.

Q. And that is where your manager or foreman of the ranch lives?

A. I haven't got a foreman.

Q. Who lives in the foreman's house?

A. The man in charge of the horses.

Q. He is the man that you look to to run the ranch in your absence?

A. No. My citrus man runs the farming part of it.

Q. Where does he live?

A. He lives off the property.

Q. And this ranch house that depreciation was disallowed on is used for what purpose?

A. It is used for two or three weeks in the summer-time. We go up there when the children are out of school, and once in a while on a week-end.

Q. When you say "we," who?

A. Mrs. Howard and the children.

Q. And yourself? [19]                      A. That's correct.

Q. You spend your vacations there?

A. Part of the time.

Q. And week-ends?

A. No. I usually stay in a bunkhouse if I go up week-ends.

Q. Does anybody live in that house except you and Mrs. Howard or the children?                      A. No.

Q. In other words, when you are not using it as a retreat, just like one would use a beach house or cabin in the mountains, it is not used at all; isn't that right?

(Testimony of Lindsay C. Howard.)

A. That's correct.

Mr. Melville: No more questions.

Redirect Examination

Q. (By Mr. Mackay): Mr. Howard, you were asked when this court-martial began. I will ask you if it isn't a fact that a long time prior to the institution of court-martial proceedings against you—and I am speaking about formal proceedings—you had been in receipt of a number of directives or endorsements from the Department asking you and demanding that you pay up on this, pay the wife the amount she was claiming? A. That's correct.

Q. Do you recall about how many endorsements you had [20] received prior to the institution of the formal proceedings?

A. Oh, I would say seven or eight.

Q. How long had that been going on prior to the formal instituting of proceedings?

A. I would say for a period of seven or eight months.

Q. During that seven or eight months you had your attorneys working on the preliminary Army court-martial — contemplated Army court-martial proceedings—in an endeavor to have those stopped?

A. That's right.

Q. At that time were they gathering information to support your claim?

A. I didn't get the question.

Q. At that time were they gathering information to support your claim in your defense?

(Testimony of Lindsay C. Howard.)

A. They were.

Mr. Mackay: That is all.

Recross-Examination

Q. (By Mr. Melville): Referring to the court-martial proceedings just once again, Mr. Howard, is it not correct that the only charge against you in that court-martial proceeding was conduct unbecoming an officer and a gentleman in that you didn't make these payments which were to your wife or divorced wife as per the court decree? [21]

Mr. Mackay: If your Honor please, I think that is covered by the stipulation.

Mr. Melville: Your Honor, I don't think it is. The stipulation quotes only a portion of the specification, and in court-martial proceedings—and I can inform you on this, Mr. Mackay——

Mr. Mackay: Thank you, Mr. Melville.

Mr. Melville: Court-martial proceedings have a charge or charges, and under each charge they have one or more specifications. This stipulation purports to quote a portion of the specification. I am interested in establishing, as I understand the fact to be, that there was only one charge and only one specification, and the charge was conduct unbecoming an officer.

Q. (By Mr. Melville): Is that right?

A. 95th Article of War.

Mr. Mackay: I will admit that, if that is what you want to prove.

Mr. Melville: Stipulated?

Mr. Mackay: Yes.

Mr. Melville: And only one specification under



(Testimony of Lindsay C. Howard.)

that charge, and that is the one that is quoted in part?

Mr. Mackay: That's right.

Mr. Melville: So stipulated. No more questions.

Mr. Mackay: Thank you, Mr. Howard.

The Court: You are excused.

(Witness excused.)

The Court: Any other witnesses?

Mr. Mackay: We would like to introduce the income tax returns for the years involved.

Mr. Melville: No objection. Just to keep the record straight, your Honor, inasmuch as the Respondent would expect to get these back afterward, may they go in as Respondent's exhibits?

Mr. Mackay: I don't care whose exhibits they go in for. They may go in in joint. There are four.

Mr. Melville: I didn't know Mr. Mackay was going to put them in. I didn't bother to strip them and I don't have a stapler remover at the moment. If it is agreeable with counsel, I will strip these returns of everything that was added subsequent to the time they were filed, and introduce them in evidence as Respondent's exhibits.

The Court: A, B, C and D.

The Clerk: What years?

The Court: Consecutive.

Mr. Melville: 1943, '44, '45 and '46.

(The documents above-referred to were received in evidence and marked Respondent's Exhibits A, B, C and D.)

Mr. Mackay: I want to express my appreciation to [23] the Court.

The Court: Would you like to file a brief?

Mr. Mackay: Yes.

The Court: The Clerk will fix the time.

(Whereupon, at 10:00 o'clock a.m., Thursday, July 13, 1950, the hearing in the above-entitled matter was closed.) [24]

Filed T.C.U.S. Aug. 10, 1950.

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[Title of Tax Court and Causes Nos. 20860 - 23168.]

Promulgated January 24, 1951

## FINDINGS OF FACT AND OPINION

1. Expenses for legal fees and costs incurred in a Court Martial proceeding against petitioner were deductible from income of petitioner.

2. Expenses incident to defense of an action brought by his divorced wife to collect payments of money awarded the divorced wife in a divorce action are not deductible from income of petitioner.

3. Depreciation on a ranch house, the sole use of which was the occasional occupancy by petitioner and his family, held not allowable as a business deduction.

A. Calder Mackay, Esq., and Adam Y. Bennion, Esq., for the petitioner.

H. A. Melville, Esq., for the respondent.

The respondent determined deficiencies in petitioner's tax liability as follows:

1943 .....	\$6,204.99	
1944 .....	3,439.12	
1945 .....	2,077.84	
1946 .....	5,185.25	[23]

The issues arose from the disallowance by respondent of certain deductions as business expenses for legal fees and of depreciation on petitioner's ranch house and its furnishings. Other adjustments will be made in the recomputation consequent hereon. Part of the facts were stipulated, the stipulation being incorporated herein by reference.

#### FINDINGS OF FACT

Petitioner is an individual with a residence in Beverly Hills, California. The returns for the periods involved (excepting 1943) were filed with the collector of internal revenue for the sixth district of California.

Petitioner and Anita Z. Howard were married June 1, 1925. On August 23, 1938, they executed a property settlement agreement providing, in part, that the petitioner would pay to Anita Z. Howard during her natural life, or until she remarried, a monthly sum of \$1,250, commencing August 1, 1938. On November 5, 1938, Anita Z. Howard was granted a final divorce by a decree of the Second Judicial District Court of the State of Nevada in and for the County of Washoe, which decree approved, ratified and adopted in its entirety, the property settlement agreement of the parties and expressly ordered and

adjudged that the covenants therein contained should be performed.

Petitioner made the payments to Anita Z. Howard of \$1,250 per month, as specified in the property settlement agreement, from August 1938 through the calendar year 1941, and then discontinued such payments.

Thereupon, Anita Z. Howard commenced an action against petitioner in the Superior Court of the State of California in and for the City and County of San Francisco, to recover the monthly payments alleged to be due her under the terms of the property settlement agreement, and praying that the Nevada decree be established as a foreign judgment and enforced by order of the California court.

Petitioner filed an "Answer and Cross-Complaint" in the action, denying liability upon two grounds:

(a) That Anita Z. Howard had remarried under common law and hence his obligation to make monthly payments had terminated under the terms of the property settlement agreement; and

(b) That the property settlement agreement was null and void, having been procured by the fraud and deceit of Anita Z. Howard, in that during their married life, and prior to the execution of the agreement, she had represented to petitioner that she had been a faithful wife, whereas in truth and fact for four years prior to the execution of the agreement she had been an unfaithful wife to plaintiff, unbeknownst to him.

The cross-complaint prayed for the cancellation and annulment of the property settlement agreement

and that portion of the decree of the Nevada court which purported to approve and adopt the same.

Anita Z. Howard filed a demurrer to the Answer and Cross-Complaint, which was sustained by the Superior Court. The decision was reversed by the District Court of Appeal, First District, Division 2, California, on April 24, 1945, in *Howard v. Howard*, 157 Pac (2d) 874, but was affirmed by the Supreme Court of California on November 27, 1945, in *Howard v. Howard*, 163 Pac. (2d) 439. The opinions by the District Court of Appeal and the Supreme Court of California, and the facts set forth therein were, by stipulation of the parties, incorporated herein and made a part hereof.

Petitioner was commissioned a Captain in the United States Army Reserve on or about April 27, 1942, and in March 1944, while still a Captain, was released from active duty as a reserve officer for medical reasons. He was not awarded disability retirement benefits. On or about November 20, 1943, a General Court Martial was appointed to try petitioner on the charge of Conduct Unbecoming an Officer and a Gentleman, the specification of the alleged violation being that he—

\* \* \* did, without due cause, from about 1 January 1942, to about 17 November 1943, dishonorably fail, refuse, and neglect to pay to Anita Zabala Howard, divorced wife of said Captain Lindsay C. Howard, the sum of One Thousand Two Hundred Fifty (\$1,250.00) Dollars per month as and for the support of said Anita Zabala Howard, which sum the said Cap-



tain Lindsay C. Howard was ordered to pay by a valid decree, dated 5 November 1938, rendered by a court of competent jurisdiction in the case of Anita Zabala Howard, Plaintiff, versus Lindsay C. Howard, Defendant, same being Cause No. 60623, in the Second Judicial District Court of the state of Nevada, in and for the County of Washoe, Nevada.

As attorneys' fees, expenses and court costs in the Court Martial proceedings and in the litigation in the Superior Court of Appeal, and Supreme Court of California, petitioner paid the following amounts:

1943

Date of Check	To Whom Issued	Check No.	Amount
2-23-43	Hart & Hart.....	7737	\$ 52.00
3-16-43	Walter McGovern .....	7761	197.00
5- 5-43	Williams & Williams .....	7790	25.00
5-17-43	Hart & Hart (Shorthand, etc. In re: deposition) .....	7804	13.09
6-17-43	Walter McGovern .....	7830	63.75
8- 5-43	Baker, Selby & Ravenel (Attorneys in Washington) .....	7855	522.80
9-14-43	Walter McGovern .....	7890	5,000.00
12- 7-43	Walter McGovern (Services of Edward Bergner) .....	7984	79.50
12-13-43	Walter McGovern (Disbursements— Howard vs. Howard).....	7991	489.34
12-16-43	Walter McGovern (Expense of Howard vs. Howard).....	7995	525.43
12-23-43	Walter McGovern .....	8004	50.00
12-29-43	Walter McGovern .....	8013	3,000.00
			<hr/> \$10,017.91

1944

Date of Check	To Whom Issued	Check No.	Amount
1- 4-44	Walter McGovern .....	8017	\$ 253.73
2- 1-44	Walter McGovern .....	8036	195.75
3-27-44	Crocker 1st Nat'l Bank (In re: Howard vs. Howard) .....	8069	150.00
3-31-44	Gus Ringole .....	8074	2,550.00
4- 3-44	Otton J. Bauer (Howard vs. Howard —Transcript on Appeal) .....	8078	265.00
4- 3-44	Walter McGovern (Telephone— Howard vs. Howard) .....	8077	31.26
5- 3-44	Notary Fee .....	Petty Cash	.50
5- 4-44	Fee to file Revocation of Power of Attorney No. 8092.....	\$10	
	Refund .....	7	
		—	3.00
6-12-44	Notary fees .....	8110	2.00
			<hr/> \$ 3,451.24

1946

Walter McGovern .....	\$ 5,000.00
Printing petition for rehearing.....	92.21
Costs in trial court.....	196.80
Costs on appeal.....	100.00
Release of attachment.....	2.00
Recording satisfaction of judgment.....	2.00
<hr/>	
\$ 5,393.01	

Petitioner was engaged in the trade or business of being an officer in the United States Army from the date he was commissioned a Captain on April 27, 1942 through the entire year 1943, and if he had been convicted in the General Court Martial proceedings he would have been discharged from such trade or business in view of the 95th Article of War (10 U.S.C.A. Section 1567), which reads as follows:

Any officer or cadet who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service.

All of the above fees paid to lawyers were incurred either in the civil litigation in the California courts respecting non-payment of alimony or in the General Court Martial proceedings, in which Court Martial proceedings petitioner was acquitted of the charges specified.

In addition to his residence in Beverly Hills, the petitioner purchased a ranch in Ventura County, California, on which was located a ranch house. The petitioner, in claiming depreciation in his Federal income tax returns on the ranch house and furnishings, designated it as the "manager's house" or the "owner's house." In addition to the ranch house, there is a foreman's house, as well as bunk houses where the ranch hands sleep and eat their meals. Petitioner had no ranch manager.

The Howard ranch is only an hour's drive from the petitioner's residence in Beverly Hills and he drives up about twice a week. On such trips he goes alone and usually sleeps and eats his meals at the bunk house. The ranch house is used very little. Petitioner and Mrs. Howard usually take their children to the ranch for two or three weeks in the summer when the children are out of school and occasionally on weekends. Part of the time the Howards use the ranch house on their vacations, just as one would use a beach house or a cabin in the mountains. When the ranch house is not so used, it is vacant.

Respondent disallowed depreciation claimed by petitioner in his returns for depreciation on the ranch house and furnishings. The respondent also disallowed, as being personal expenses, all of the fees paid to lawyers enumerated above.

## OPINION

Van Fossan, Judge: Respondent admits that the petitioner, while on active duty as a Captain in the Army, was engaged in a trade or business. Albeit the original instigation of the Court Martial proceedings was at the behest of the petitioner's divorced wife, the charges were made and the trial was conducted and prosecuted by petitioner's employer, the United States Army. The 95th Article of War (10 U.S.C.A. Section 1567) states that a conviction of "conduct unbecoming an officer and a gentleman" carries with it the penalty of dismissal from the service. Thus it was that petitioner was defending himself against possible loss of his commission as an officer in the Army, which was a source of part of his income. The fact that he had other income is immaterial. In *Commissioner v. Heininger*, 320 U. S. 467, the Supreme Court said:

\* \* \* Upon being served with notice of the proposed fraud order respondent was confronted with a new business problem which involved far more than the right to continue using his old advertisements. He was placed in a position in which not only his selling methods but also the continued existence of his lawful business were threatened with complete destruction. So far as appears from the record respondent did not believe, nor under our system of jurisprudence was he bound to believe, that a fraud order destroying his business was justified by the facts or the law. Therefore he did not volun-

tarily abandon the business but defended it by all available legal means. To say that this course of conduct and the expenses which it involved were extraordinary or unnecessary would be to ignore the ways of conduct and the forms of speech prevailing in the business world. \* \* \*

The fact that petitioner was successful in defending himself against the charge and was acquitted demonstrates that petitioner was justified in his position that the charge was baseless. We are of the opinion that under the facts here present legal expenses and costs incurred by petitioner in contesting the Court Martial proceeding constituted legitimate business expenses and were deductible as such. We see no merit in respondent's argument that the item of \$522.80, *supra*, for services in attempting to prevent the institution of the trial by Court Martial was against public policy. Petitioner knew of the threatened action and believed that he was not guilty of the impending charge of misconduct. There was nothing improper in making such representations to the proper authority.

From a careful study of the evidence, which lacks much of being precise and complete, we find that petitioner incurred and paid legal expenses in the amount of \$3,522.80 in 1943 and \$2,550 in 1944 in connection with the Court Martial proceedings, which amounts are deductible as business expenses.

The legal expenses incident to the case of Howard vs. Howard are different. The litigation had its genesis in the personal relationship of the petitioner



and his former wife and stems from the property settlement agreement of 1938. That contract was followed by a divorce and final decree which incorporated the contract provision for payment of the sums fixed therein. The litigation known as *Howard vs. Howard* was predicated on this decree and was instituted by the former wife to compel compliance therewith. It was in no wise related to petitioner's business activity. The whole situation involved personal (as distinguished from business) relationships and personal considerations. It never lost its basic character or personal nature. Throughout the entire history and development of income tax law there has existed a sharply defined distinction between business expenses allowable as deductions and nonallowable personal expenses. If the bars were let down so as to accommodate petitioner's position and approval were given to his argument, this historic distinction would practically cease to exist. The contention that such expenditures are allowable as expenses of retaining income previously earned leaves us unmoved.

It may seem strange that we find no decided case squarely in point. Perhaps this is because the answer seems so obvious that no one has heretofore raised the issue. Be that as it may, we find no basis for petitioner's contention and accordingly affirm respondent's disallowance of the legal expenses incident to the case of *Howard vs. Howard*. The *Kornhauser* case (*Kornhauser vs. United States*, 276 U.S. 145) is not in point since the expenses there under

study grew directly out of and were proximately related to the business activity of the taxpayer. Similar observations might be made as to *Commissioner vs. Heininger*, *supra*.

Petitioner claimed, and respondent disallowed, depreciation on a ranch house and its furnishings. Petitioner contends that the ranch house was not his residence but was used for business purposes. We disagree with the petitioner. Petitioner went to the ranch on the average of twice a week and usually slept in the bunk house where the ranch hands lived. The only use made of the ranch house was perhaps once a month by petitioner, or by petitioner and his family for two or three weeks in the summertime when the children were out of school, and occasionally on a weekend. Petitioner and his family used the ranch house much as one "would use a beach house or a cabin in the mountains." It was apparently never used for business purposes. There was another house which was occupied by the man in charge of petitioner's horses. He had no ranch manager.

A man may have more than one residence. The amount of its use is not controlling. Here there is no evidence of any business use of the property nor does the evidence show affirmatively the size, the purpose or the use of the ranch. Except by indulging in unwarranted inference from the record, we do not know whether it was a business activity or a hobby. Under the facts of record, we have no alternative to holding that petitioner has failed to show that his use of the ranch house was a business use.

His bald statement that it was not his residence does not prove his contention. We affirm the Commissioner on this point.

Reviewed by the Court.

Decisions will be entered under Rule 50.

Raum, J., concurs in the result.

[Seal]

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[Title of Tax Court and Causes Nos. 20860 - 23168.]

## MOTION TO CORRECT FINDINGS OF FACT

Whereas, on page 8 of its mimeographed report in the above cause The Tax Court found, among other things, "that petitioner incurred and paid legal expenses in the amount of \$3,522.80 in 1943 and \$2,550.00 in 1944 in connection with the Court Martial proceedings, which amounts are deductible as business expenses"; and

Whereas, said sum of \$3,522.80 consists of a payment of \$522.80 on August 5, 1943 to Baker, Selby & Ravenel, attorneys in Washington, and a payment of \$3,000.00 on December 29, 1943 to Walter McGovern; and

Whereas, the uncontradicted evidence in the proceeding establishes that in addition to said amounts the petitioner paid the sum of \$5,000.00 to Walter McGovern on September 14, 1943, one-half of which was for services in connection with the Court Martial proceedings;

Now, Therefore, petitioner respectfully moves that the sum of \$6,022.80 be inserted in the foregoing

finding of fact in lieu of the figure \$3,522.80, as representing payments in 1943 in connection with the Court Martial proceedings. [24]

In support of this motion, the Court's attention is respectfully directed to the following testimony of the petitioner on direct and cross examination:

“Q. I call your attention to the next one, which is a payment dated September 14, 1943, a \$5,000 by check 7890 issued to Walter McGovern; and I will ask you if Walter McGovern was your attorney?

A. He was.

Q. Did he represent you both in the civil suits as well as in the court-martial?

A. That's correct.

Q. Do you have any recollection as to what that was paid for, that \$5,000?

A. The \$5,000 was for expense on the court-martial and the civil case, and also as a retainer in both cases.

Q. Can you make any allocation or any recollection of what portion of that was for court-martial and what portion for the other?

A. Well, my judgment would be that it was about half and half.

Q. I see. He was handling both cases at the same time?

A. That's right. [T. 9]

\* \* \* \* \*

Q. Then in September you testified—September 14, 1943—you paid \$5,000 to Walter McGovern. Was your testimony that that was partly for the court-martial and partly for the civil suit?

A. That's correct.

Q. How do you know?

A. Mr. McGovern told me that.

Q. Did he render you any statement for that \$5,000?

A. He did.

Q. Did he segregate it as between the court-martial proceedings and the civil proceedings?

A. No, he didn't.

\* \* \* \* \*

Q. The court-martial proceeding wasn't entitled Howard versus Howard?

A. They were as far as Mr. McGovern was concerned. All his bills were made out the same way." [T. 15, 16, 17.]

Thus, we have uncontradicted testimony that of the \$5,000.00 paid to Walter McGovern on September 14, 1943, one-half (or \$2,500.00) was charged by the attorney and paid by petitioner for services in connection with the Court Martial proceedings—a fact that is not contradicted at all by the circumstances that on the attorney's books the Court Martial proceedings were instigated at the behest of the divorced wife and hence in a broad sense grew out of and were part of "Howard versus Howard." We respectfully submit that the Court is bound by the uncontradicted testimony thus submitted on both direct and cross examination.



Wherefore, it is respectfully prayed that this motion be granted.

Dated January 30, 1951.

Respectfully submitted,

/s/ A. CALDER MACKAY,  
/s/ ARTHUR McGREGOR,  
/s/ HOWARD W. REYNOLDS,  
/s/ ADAM Y. BENNION,  
/s/ RICHARD N. MACKAY,  
Counsel for Petitioner.

Received and Filed T.C.S.U. Feb. 5, 1951.

Denied T.C.U.S. Feb. 12, 1951.

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[Title of Tax Court and Causes Nos. 20860 - 23168.]

MOTION TO RECONSIDER THE COURT'S  
OPINION ON THE SECOND ISSUE

Whereas, the Court's opinion on the second issue in the above-entitled proceeding (page 8 of the mimeographed report) in effect overrules its recent decisions in *Elsie B. Gale*, 13 T.C. 661, and *Barbara B. LeMond*, 13 T.C. 670, which are not cited in the opinion,

Now, Therefore, petitioner respectfully moves that the opinion on the second issue be reconsidered in the light of the memorandum attached hereto, and that the expenses involved in said issue be held to be deductible by the petitioner.

Wherefore, it is respectfully prayed that this motion be granted.

Dated January 30, 1951.

/s/ A. CALDER MACKAY,  
/s/ ARTHUR McGREGOR,  
/s/ HOWARD W. REYNOLDS,  
/s/ ADAM Y. BENNION,  
/s/ RICHARD N. MACKAY,

Counsel for Petitioner. [25]

Memorandum in Support of Motion to Reconsider  
The Tax Court's Opinion on the Second Issue

The Court's opinion on the second issue in effect overrules its recent decisions in *Elsie B. Gale*, 13 T.C. 661, and *Barbara B. McMon*, 13 T.C. 670, without citing them.

In those cases divorced wives sought to deduct legal fees incurred to obtain or to increase alimony. As here, the Commissioner sought to disallow the deductions on the ground that they were personal in nature. The Court, in reviewed opinions unanimous on this point, held that the expenses were not personal in nature, declaring in the *Gale* case—

“\* \* \* Moreover, the evidence shows that the legal expense incurred by the petitioner herein was solely for the purpose of producing or collecting increased alimony for past and future years and was in no respect paid in connection with the personal marital difficulties of petitioner and her husband, which had been settled

by separation and divorce over three years before the suit in question was commenced by the petitioner. \* \* \*” (Emphasis added.)

And declaring in the LeMond case—

“\* \* \* the attorneys to whom the fees in question were paid were solely concerned with the financial aspects of the separation, rather than with the settlement of the personal or marital difficulties of the petitioner and her husband. Therefore, it is our opinion that no part of the legal expenses herein constituted personal family expenses and that no allocation of the legal fees in that respect is necessary.”

Yet in the present case, involving legal fees incurred by a husband in defending suit for alimony, the Court declares at page 8—

“\* \* \* The whole situation involved personal (as distinguished from business) relationships and personal considerations. It never lost its basic character or personal nature. Throughout the entire history and development of income tax law there has existed a sharply defined distinction between expenses allowable as deductions and nonallowable personal expenses. If the bars were let down so as to accommodate petitioner’s position and approval were given to his argument, this historic distinction would practically cease to exist.\* \* \*

In identical situations it seems inconceivable that a transaction is “personal” from the standpoint

1943

## Schedule 1—NET INCOME

	Income Tax	Victory Tax
Net income per statutory notice dated		
August 6, 1948.....	\$44,655.79	\$48,237.92
As adjusted in accordance with		
Tax Court's opinion .....	41,132.99	44,715.12
	<hr/>	<hr/>
Difference (decrease) .....	\$ 3,522.80	\$ 3,522.80
	<hr/> <hr/>	<hr/> <hr/>

## Schedule 2—EXPLANATION OF ADJUSTMENTS

The Tax Court holds that petitioner incurred and paid legal expenses in the amount of \$3,522.80 in 1943 and \$2,550.00 in 1944 in connection with Court Martial proceedings which are deductible as business expenses.

## Schedule 3—COMPUTATION OF TAX

Net income, Schedule 1.....	\$41,132.99
Less: Personal exemption .....	\$1,200.00
Credit for dependents.....	1,400.00
	<hr/>
Surtax net income.....	\$38,532.99
Less: Interest on United States obligations....	\$1,704.18
Earned income credit, Schedule 4.....	591.22
	<hr/>
Balance subject to normal tax.....	\$36,237.59
	<hr/> <hr/>
Normal tax at 6% .....	\$ 2,174.26
Surtax .....	16,125.12
	<hr/>
Total income tax.....	\$18,299.38
Less: Income tax paid to a foreign country.....	59.94
	<hr/>
Net income tax.....	\$18,239.44
Victory tax net income, Schedule 1.....	\$44,715.12
Less: Specific exemption .....	624.00
	<hr/>
Income subject to victory tax.....	\$44,091.12
	<hr/> <hr/>

Schedule 3—Computation of Tax—(Continued)

Victory tax at 5%.....	\$ 2,204.56
Less: Credit limited to.....	900.00
	<hr/>
Net victory tax.....	1,304.56
	<hr/>
Net income and victory tax.....	\$19,544.00
Plus: Unforgiven quarter 1942 tax.....	None
	<hr/>
Income and victory tax liability.....	\$19,544.00
Liability per return .....	15,854.29
	<hr/>
Deficiency .....	\$ 3,689.71
	<hr/> <hr/>

Schedule 4—EARNED INCOME CREDIT

Salaries per statutory notice.....	\$ 9,435.00
Less: Business expense per Schedule 2.....	3,522.80
	<hr/>
Earned net income.....	\$ 5,912.20
	<hr/> <hr/>
Entire net income.....	\$41,132.99
	<hr/> <hr/>
Earned income credit (10% of \$5,912.20).....	\$ 591.22
	<hr/> <hr/>

1944

Schedule 5—NET INCOME

Net income per statutory notice dated August 6, 1948.....	\$74,896.32
As adjusted in accordance with Tax Court's opinion.....	72,346.32
	<hr/>
Difference (decrease) .....	\$ 2,550.00
	<hr/> <hr/>

Schedule 6—EXPLANATION OF ADJUSTMENTS

See Schedule 2.

Schedule 7—COMPUTATION OF TAX

Net income, Schedule 5.....	\$72,346.32
Less: Surtax exemptions .....	1,500.00
	<hr/>
Surtax net income.....	\$70,846.32
	<hr/> <hr/>
Surtax .....	\$42,805.52



## Schedule 7—Computation of Tax—(Continued)

Net income .....	\$72,346.32	
Less: Normal tax exemption.....	\$500.00	
Partially tax-exempt interest	320.77	820.77
	<hr/>	<hr/>
Balance subject to normal tax.....	\$71,525.55	
	<hr/>	
Normal tax at 3%.....		2,145.77
		<hr/>
Total normal tax and surtax.....		\$44,951.29
		<hr/>
Alternative tax, Schedule 8.....		\$38,045.05
		<hr/>
Smaller tax .....		\$38,045.05
Less: Income tax paid to a foreign country.....		266.97
		<hr/>
Income tax liability.....		\$37,778.08
Liability per return.....		36,251.46
		<hr/>
Statutory deficiency .....		\$ 1,526.62

	Tax	Interest
Subsequent assessment, Account No. 519014, June 10, 1949.....	\$ 509.79	\$129.62
Statutory deficiency .....	1,526.62	388.17
	<hr/>	<hr/>
Balance of deficiency.....	\$1,016.83	\$258.55
	<hr/>	<hr/>

## Schedule 8—ALTERNATIVE TAX

Net income, Schedule 5.....	\$72,346.32
Less: Excess of net long-term capital gain over net short- term capital loss .....	23,720.26
	<hr/>
Ordinary net income.....	\$48,626.06
Less: Surtax exemptions .....	1,500.00
	<hr/>
Surtax net income.....	\$47,126.06
	<hr/>
Surtax .....	\$24,750.76

Schedule 8—Alternative Tax—(Continued)

Ordinary net income.....	\$48,626.06	
Less: Normal tax exemption.....	\$500.00	
Partially tax-exempt interest	320.77	820.77
	<hr/>	<hr/>
Balance subject to normal tax.....	\$47,805.29	
	<hr/>	
Normal tax at 3%.....		1,434.16
		<hr/>
Partial tax .....		\$26,184.92
Plus: 50% of gain.....		11,860.13
		<hr/>
Alternative tax .....		\$38,045.05
		<hr/>

1945

Schedule 9—NET INCOME

Net income per statutory notice dated August 6, 1948.....	\$35,369.54
	<hr/>
As adjusted in accordance with Tax Court's opinion (no change) .....	\$35,369.54
	<hr/>

Schedule 10—COMPUTATION OF TAX

Income tax liability per statutory notice (no change).....	\$16,422.33	
Liability per return.....	14,344.49	
	<hr/>	
Statutory deficiency .....	\$ 2,077.84	
	<hr/>	
	Tax	Interest
Subsequent assessment, Account No. 519015, June 10, 1949 .....	\$1,073.49	\$208.55
Statutory deficiency .....	2,077.84	403.66
	<hr/>	<hr/>
Balance of deficiency.....	\$1,004.35	\$195.11
	<hr/>	<hr/>

Received and Filed T.C.U.S. April 10, 1951.

[Title of Tax Court and Cause No. 23168.]

# RESPONDENT'S COMPUTATION FOR ENTRY OF DECISION

The attached proposed computation is submitted, on behalf of the respondent, to The Tax Court of the United States, in compliance with its opinion determining the issues in this proceeding.

This computation is submitted in accordance with the opinion of the Court, without prejudice to the respondent's right to contest the correctness of the decision entered herein by the Court, pursuant to the statutes in such cases made and provided.

/s/ CHARLES OLIPHANT, ECC,  
Chief Counsel,  
Bureau of Internal Revenue.

Of Counsel:

B. H. NEBLETT,  
Division Counsel,  
E. C. CROUTER,  
H. A. MELVILLE,  
Special Attorneys,  
Bureau of Internal Revenue. [27]

C-TS:PD LA:DRR

March 21, 1951

## RECOMPUTATION STATEMENT

In re: Lindsay C. Howard, 1230 Benedict Canyon Drive,  
Beverly Hills, California.

Docket No. 23168

## INCOME TAX LIABILITY

Year	Deficiency
1946 .....	\$5,185.25

The following schedules of recomputation have been made under Rule 50, pursuant to the findings of The Tax Court of the United States, promulgated January 24, 1951.

1946

Schedule 1—NET INCOME

Net income per statutory notice dated Jan. 31, 1949.....	\$84,471.79
As adjusted in accordance with Tax Court opinion (no change) .....	\$84,471.79

Schedule 2—COMPUTATION OF TAX

Income tax liability per statutory notice (no change).....	\$47,134.73
Liability per return.....	41,949.48
Deficiency .....	\$ 5,185.25

Received and Filed T.C.U.S. April 10, 1951.

[Title of Tax Court and Causes Nos. 20860 - 23168.]

NOTICE UNDER RULE 50

Take Notice that the Respondent in the above-entitled proceeding filed with the Court on April 10, 1951, a computation and notice, a copy of which is inclosed. This proceeding will be called for hearing upon such computation at 10 a.m. on May 23, 1951, before a Division of the Court at its Washington Office, Constitution Avenue at 12th Street, Northwest, unless, prior to that date, your written acquies-

cence to the entry of a decision based on such computation shall have been filed with the Court.

No further notice of said hearing will be sent.

Dated: April 12, 1951.

/s/ VICTOR J. MERSCH,  
Clerk.

To: A. Calder Mackay, Esq.

[28]

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[Title of Tax Court and Causes Nos. 20860 - 23168.]

The computation of the respondent filed with the Court on April 10, 1951, has been examined and found to be in accordance with the determination of the Court as set forth in its report. Petitioner therefore joins with the respondent in praying that the Court enter its decision based upon such computation, reserving however the right to contest the correctness of such decision in the appellate courts as provided by statute.

/s/ A. CALDER MACKAY,  
/s/ ADAM Y. BENNION,  
Attorneys for Petitioner.

Received and Filed April 24, 1951.

[29]



The Tax Court of the United States  
Washington

Docket No. 20860

LINDSAY C. HOWARD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION

Pursuant to the Findings of Fact and Opinion of the Court promulgated January 24, 1951, the respondent filed a recomputation of tax on April 10, 1951, and petitioner filed an acquiescence in said computation on April 24, 1951; Now, therefore, it is

Ordered and Decided: That there are deficiencies in income tax for the calendar years 1943, 1944 and 1945 in the respective amounts of \$3,689.71, \$1,016.83 and \$1,004.35.

[Seal]        /s/ ERNEST H. VAN FOSSAN,  
Judge.

Entered April 26, 1951.

[30]

The Tax Court of the United States  
Washington

Docket No. 23168

LINDSAY C. HOWARD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION

Pursuant to the Findings of Fact and Opinion of the Court promulgated January 24, 1951, the respondent filed a recomputation of tax on April 10, 1951, and petitioner filed an acquiescence in said computation on April 24, 1951; Now, therefore, it is

Ordered and Decided: That there is a deficiency in income tax for the taxable year ended December 31, 1946 in the amount of \$5,185.25.

[Seal]        /s/ ERNEST H. VAN FOSSAN,  
Judge.

Entered April 26, 1951.

[31]

In the United States Court of Appeals  
for the Ninth Circuit

Tax Court Docket Nos. 20860 - 23168

LINDSAY C. HOWARD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

PETITION FOR REVIEW OF DECISIONS  
OF THE TAX COURT OF THE  
UNITED STATES

To the Honorable Judges of the United States Court  
of Appeals for the Ninth Circuit:

Lindsay C. Howard, by and through his attorneys, hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decisions entered by The Tax Court of the United States on April 26, 1951, “\* \* \* that there are deficiencies in income tax for the calendar years 1943, 1944 and 1945 in the respective amounts of \$3,689.71, \$1,016.83 and \$1,004.35” and “\* \* \* deficiency in income tax for the taxable year ended December 31, 1946 in the amount of \$5,185.25”, in respect of the Federal tax liability of the Petitioner, Lindsay C. Howard. This Petition for Review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

## I.

## Nature of the Controversy

The issue is whether the Commissioner of Internal Revenue and the Court below erred in determining that expenses for legal fees and costs incurred in defense of an action brought [32] by Petitioner's divorced wife to collect alimony are not deductible from Petitioner's gross income as a nonbusiness expense.

Petitioner and Anita Z. Howard were married on June 1, 1925. On August 23, 1938, they executed a property settlement agreement providing, in part, that the Petitioner would pay to Anita Z. Howard during her natural life, or until she remarried, a monthly sum of \$1,250.00 commencing August 1, 1938. On November 5, 1938, Anita Z. Howard was granted a final divorce by a decree of the Second Judicial District Court of the State of Nevada in and for the County of Washoe, which decree approved, ratified and adopted, in its entirety, the property settlement agreement of the parties and expressly ordered and adjudged that the covenants therein contained should be performed.

Petitioner made the payments to Anita Z. Howard of \$1,250.00 per month, as specified in the property settlement agreement, from August 1, 1938, through the calendar year 1941, and then discontinued such payments.

Thereupon, Anita Z. Howard commenced an action against Petitioner in the Superior Court of the State of California, in and for the City and County

of San Francisco, to recover the monthly payments alleged to be due her under the terms of the property settlement agreement, and praying that the Nevada decree be established as a foreign judgment and enforced by order of the California Court.

Petitioner filed an answer and cross-complaint in the action, denying liability upon two grounds:

(a) That Anita Z. Howard had remarried under common law, and hence, his obligation to make monthly payments had terminated under the terms of the property settlement agreement;

(b) That the property settlement agreement was null and void having been procured by fraud and deceit of Anita Z. Howard in that during their married life and prior to the execution of the agreement she had represented to Petitioner that she had been a faithful wife, whereas in truth and fact for four years prior to the execution of the agreement she had been an unfaithful wife to Petitioner, unbeknownst to him. The cross-complaint prayed for the cancellation and annulment of the property settlement agreement and that portion of the decree which purported to approve and adopt the same.

Anita Z. Howard filed a demurrer to the answer and cross-complaint, which was sustained by the Superior Court. The decision was reversed by the District Court of Appeals, First District, Division Two, California, on April 24, 1945, in *Howard vs. Howard*, 157 Pac. (2d) 874, but was affirmed by the Supreme Court of California on November 27, 1945, in *Howard vs. Howard*, 163 Pac. (2d) 439.

The Tax Court held that the legal fees and costs



incurred by the Petitioner in defense of said litigation are not deductible from the gross income of Petitioner on the ground that they are personal in nature.

The Petitioner is aggrieved by The Tax Court's opinion and by its decision, in that in two recent decisions, *Elsie B. Gale*, 13 T.C. 661, and *Barbara B. LeMond*, 13 T.C. 670, The Tax Court denied the Commissioner's contention that legal fees and costs incurred by the divorced wife to obtain or increase alimony were personal in nature, and held that said expenses were properly deductible by the divorced wives. In identical situations it seems inconceivable that a transaction is "personal" from the standpoint of an ex-husband and not "personal" from the ex-wife's standpoint. Legal fees paid to resist alimony are no more personal to an ex-husband than are legal fees paid by an ex-wife to obtain alimony. The legal fees and costs incurred by Petitioner in said litigation should therefore be allowed Petitioner as a deductible nonbusiness expense. The Tax Court erred in failing to so hold.

In addition The Tax Court erred in its Findings of Fact in respect to the amounts incurred and paid as legal expenses in connection with court-martial proceedings, which amounts the lower Court held were deductible as business expenses. The uncontradicted evidence in the proceeding establishes that in 1943 in addition to the sum of \$3,522.80 as found by The Tax Court, the Petitioner paid the sum of \$5,000.00 to Walter McGovern on September 14, 1943, one-half of which was for services in connection with

the court-martial proceedings. Petitioner incurred and paid legal expenses in the sum of \$6,022.80 in connection with said proceedings. The Tax Court erred in failing to so find and in failing to grant Petitioner's Motion to Correct Findings of Fact in respect to said item.

## II.

### Court In Which Review Is Sought

The United States Court of Appeals for the Ninth Circuit is the Court in which review of said decisions of The Tax Court of the United States is sought pursuant to the provisions of Section 1141 of the Internal Revenue Code.

## III.

### Venue

The Findings of Fact and Opinion of The Tax Court were entered on January 24, 1951. Petitioner filed his income tax return for the calendar year 1943 with the Collector of Internal Revenue for the First District of California, and for the calendar years 1944, 1945 and 1946 with the Collector of Internal revenue for the Sixth District of California, all within the jurisdiction of the United States Court of Appeals for the Ninth Circuit. The Petitioner is an individual, who is residing at 1230 Benedict Canyon Drive, Beverly Hills, California.

The parties hereto have not stipulated that said decisions may be reviewed by any Court of Appeals other than the one herein designated.

Wherefore, Petitioner prays that the Findings of Fact and Opinion and the Decisions of The Tax

Court be reviewed by the United States Court of Appeals for the Ninth Circuit; that a transcript of the record be prepared in accordance with the law and rules of said Court and transmitted to the Clerk of said Court for filing; and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

Dated July 20, 1951.

/s/ A. CALDER MACKAY,  
/s/ ARTHUR MCGREGOR,  
/s/ HOWARD W. REYNOLDS,  
/s/ ADAM Y. BENNION,  
/s/ RICHARD N. MACKAY,  
Attorneys for Petitioner.

Filed T.C.U.S. July 23, 1951.

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[Title of U. S. Court of Appeals and Causes.]

### NOTICE OF FILING PETITION FOR REVIEW

To Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, Washington, D. C.:

You are hereby notified that the Petitioner on the . . . . day of July, 1951, filed with the Clerk of The Tax Court of the United States at Washington, D. C., a Petition for Review by the United States Court of Appeals for the Ninth Circuit of the Findings of Fact and Opinion and Decisions of The Tax Court of the United States heretofore rendered in the above-entitled causes. A copy of the Petition for

Review, as filed, is hereto attached and served upon you.

Dated July 20, 1951.

/s/ A. CALDER MACKAY,  
/s/ ARTHUR MCGREGOR,  
/s/ HOWARD W. REYNOLDS,  
/s/ ADAM Y. BENNION,  
/s/ RICHARD N. MACKAY,  
Attorneys for Petitioner.

Acknowledgment of Service attached. [33]  
Filed T.C.U.S. July 23, 1951.

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[Title of U. S. Court of Appeals and Causes.]

## DESIGNATION OF CONTENTS OF RECORD ON REVIEW

To the Clerk of The Tax Court of the United States:

Comes Now the Petitioner on review herein, by his attorneys, A. Calder Mackay, Arthur McGregor, Howard W. Reynolds, Adam Y. Bennion and Richard N. Mackay, and hereby designates for inclusion in the record on review in the above-entitled proceedings the complete record of all of the proceedings and evidence taken before The Tax Court of the United States and all matters required by Rule 75(g) of the Federal Rules of Civil Procedure, including the following:

1. Docket entries of the proceedings before The Tax Court.

## 2. Pleadings:

(a) Petitions including attached copies of deficiency notices.

(b) Answers.

3. Stipulation of Facts with exhibits attached.

4. Findings of Fact and Opinion promulgated January 24, 1951. [34]

5. Petitioner's Motions to Correct Findings of Fact and to Reconsider the Court's Opinion on the Second Issue.

6. Decisions entered April 26, 1951.

7. Official report of hearing before The Tax Court on July 13, 1950.

8. All exhibits.

9. Petition for Review and Notice of Filing Petition for Review.

10. This Designation of Contents of Record on Review.

Wherefore, it is requested that copies of the record, as above designated, be prepared and transmitted to the United States Court of Appeals for the Ninth Circuit in accordance with the rules of said Court.

Dated July 20, 1951.

/s/ A. CALDER MACKAY,  
/s/ ARTHUR McGREGOR,  
/s/ HOWARD W. REYNOLDS,  
/s/ ADAM Y. BENNION,  
/s/ RICHARD N. MACKAY,  
Attorneys for Petitioner.

Acknowledgment of Service attached. [34]

Filed T.C.U.S. July 23, 1951.



The Tax Court of the United States  
Washington

Docket Nos. 20860 and 23168

LINDSAY C. HOWARD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

CERTIFICATE

I, Ralph A. Starnes, Chief Deputy Clerk of The Tax Court of the United States do hereby certify that the foregoing documents, 1 to 34, inclusive, constitute and are all of the original papers and proceedings, including Exhibits 1-A and 2-B attached to the Stipulation of Facts, and Respondent's Exhibits A, B, C and D admitted in evidence, on file in my office as the original and complete record in the proceedings before The Tax Court of the United States in the above entitled proceedings and in which the petitioner in the Tax Court proceedings has initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceedings, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 1st day of August, 1951.

[Seal]      /s/ RALPH A. STARNES,  
Chief Deputy Clerk.

[Endorsed]: No. 13045. United States Court of Appeals for the Ninth Circuit. Lindsay C. Howard, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of The Tax Court of the United States.

Filed: August 6, 1951.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

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In the United States Court of Appeals  
for the Ninth Circuit

No. 13045

LINDSAY C. HOWARD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

STATEMENT OF POINTS AND  
DESIGNATION

Comes Now Lindsay C. Howard, Petitioner on Review herein, by his attorneys, A. Calder Mackay, Arthur McGregor, Howard W. Reynolds, Adam Y. Bennion and Richard N. Mackay, and states that the points on which he intends to rely in this case are as follows:

1. The Tax Court erred in holding and deciding

that expenses for legal fees and costs incurred in defense of an action brought by Petitioner's divorced wife to collect alimony were personal in nature and therefore not deductible from gross income.

2. The Tax Court erred in failing and refusing to hold and decide that all of said expenses for legal fees and costs are deductible as an ordinary and necessary nonbusiness expense under Section 23(a) (2) of the Internal Revenue Code.

3. The Tax Court erred in that its Findings of Fact and Opinion are not supported by, but are contrary to, the evidence, to wit, The Tax Court found and held that Petitioner incurred and paid legal expenses in the amounts of \$3,522.80 in 1943 and \$2,550.00 in 1944 in connection with Court-Martial proceedings; whereas the uncontradicted evidence establishes that in addition to said amounts the Petitioner paid the sum of \$5,000.00 to Walter McGovern on September 14, 1943, one-half of which was for services in connection with the Court-Martial proceedings. The Tax Court erred further in failing to grant Petitioner's Motion to Correct Findings of Fact in respect of said item.

4. The Tax Court erred in failing and refusing to find as fact that Petitioner incurred and paid legal expenses in the sum of \$6,022.80 in 1943 in connection with the Court-Martial proceedings.

Petitioner hereby designates the entire record as certified to the Clerk of the above-entitled Court, with the exclusion of the original exhibits pursuant to the "Stipulation and Order Re Exhibits" to be

submitted forthwith, as necessary to be printed for the consideration of the points set forth above, including this Statement of Points and Designation and said "Stipulation and Order Re Exhibits" to be submitted.

Dated August 9, 1951.

/s/ A. CALDER MACKAY,  
/s/ ARTHUR MCGREGOR,  
/s/ HOWARD W. REYNOLDS,  
/s/ ADAM Y. BENNION,  
/s/ RICHARD N. MACKEY,  
Attorneys for Petitioner.

[Endorsed]: Filed Aug. 11, 1951. Paul P. O'Brien,  
Clerk.

[Title of U. S. Court of Appeals and Cause.]

STIPULATION AND ORDER RE  
EXHIBITS

It is hereby agreed and stipulated by counsel in the above-entitled cause that Respondent's original Exhibits A, B, C and D may be excluded from the printed record but may be referred to by the parties in brief and argument as if part of that record.

/s/ THERON L. CAUDLE,  
Assistant Attorney General,  
Counsel for Commissioner of  
Internal Revenue.

/s/ ADAM Y. BENNION,  
Counsel for Lindsay C. Howard.

So ordered:

/s/ WILLIAM DENMAN,  
/s/ CLIFTON MATHEWS,  
/s/ HOMER T. BONE,  
Judges U. S. Court of Appeals  
for the Ninth Circuit.

Dated August 20, 1951.

[Endorsed]: Filed Aug. 21, 1951. Paul P. O'Brien,  
Clerk.



